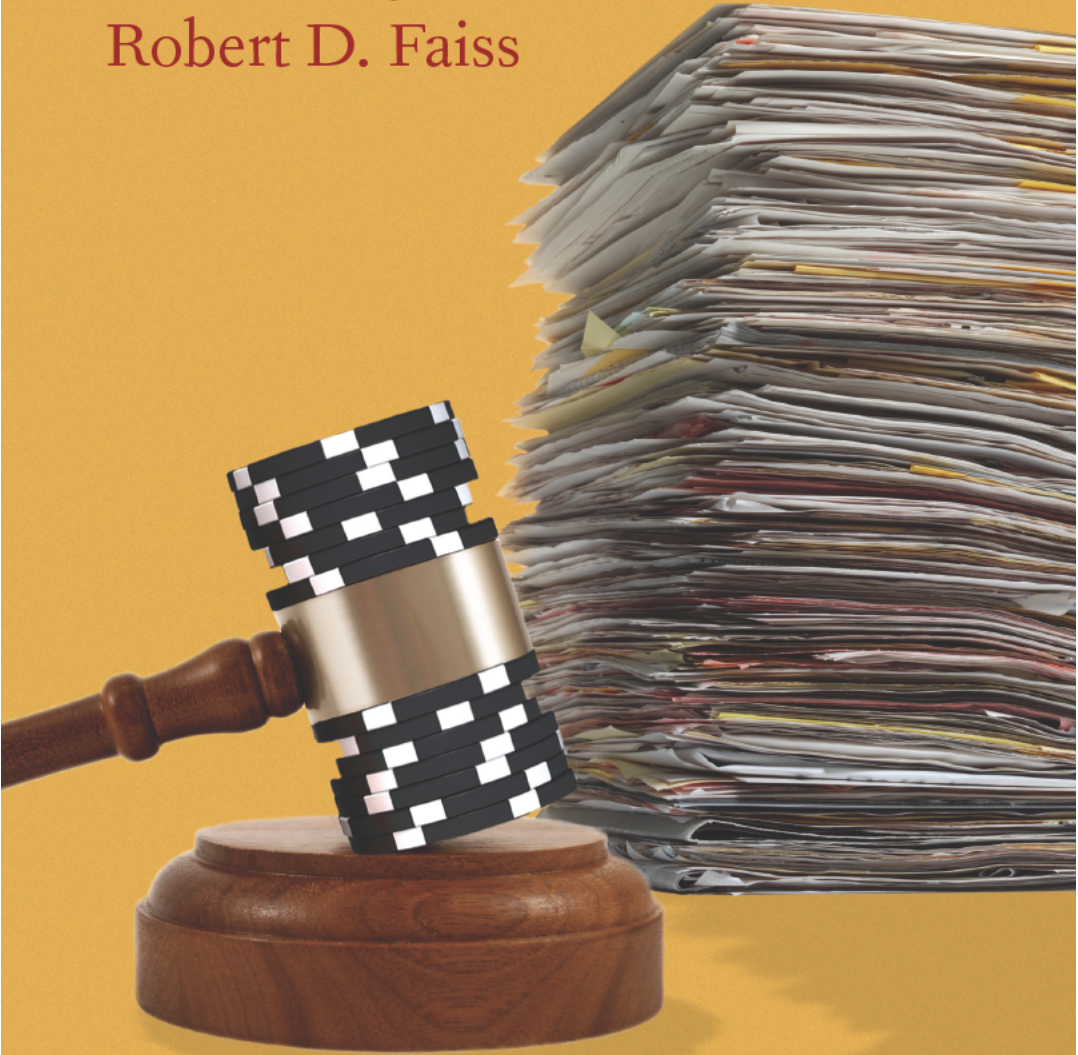

GAMING REGULATION AND GAMING LAW IN NEVADA

As remembered by
Robert D. Faiss



UNIVERSITY OF NEVADA ORAL HISTORY PROGRAM

ROBERT D. FAISS: GAMING REGULATION AND GAMING LAW IN NEVADA

Interviewee: Robert D. Faiss

Interviewed: 2002

Published: 2006

Interviewer: Dwayne Kling

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Description

No attorney has played a greater role in the rise of the casino industry and how it is regulated than has Robert D. Faiss. In this oral memoir, Faiss gives an eloquent, eyewitness account of crucial events and moments in the history of gaming regulation and gaming law in Nevada.

Two years after Democrat Grant Sawyer took office as governor in 1959, Bob Faiss became assistant executive secretary of the Nevada Gaming Commission, where he created the first state publication on the history, economics, and control of the gaming industry. In 1963, Sawyer brought Faiss to the governor's office as executive assistant, with duties that included acting both as press secretary and chief speechwriter—an appointment that began a relationship that shaped Faiss's life. In a quest for respectability and economic development, Sawyer changed how the gaming industry was regulated. Faiss played a role in these changes, including the creation of the Nevada Gaming Commission and the List of Excluded Persons.

Faiss spent eight years working for the Nevada state government, and he later worked at the federal level, including service as White House staff assistant during President Johnson's last year in office. When he completed his law degree from American University in Washington, D.C., Faiss returned to Las Vegas as an attorney for Nevada's largest law firm, Lionel Sawyer & Collins.

In his three decades as an administrative attorney, Bob Faiss represents gaming clients and deals with regulatory boards—mostly related to gaming, but also in other realms of business. More than anyone else in his profession, Faiss has made gaming law important and respected. He is responsible for many important parts of the Nevada Revised Statutes and the regulations that the Nevada Gaming Commission and the Nevada Gaming Control Board use. He also was a key attorney in the growth of several major Nevada gaming corporations. For three decades, Faiss has represented the gaming industry at the state legislature. From 1998 to 2003, he served on the U.S. Treasury Department's Bank Secrecy Act Advisory Board as the representative of the U.S. casino industry, and he was a charter trustee and president of the International Association of Gaming Attorneys. The state of Nevada and its most important industry are far better for Bob Faiss's hard work and loyalty.

GAMING REGULATION AND
GAMING LAW IN NEVADA



Robert D. Faiss

PRAISE FOR *GAMING REGULATION AND GAMING
LAW IN NEVADA*:

“This short and clear work, by an inside participant, is a *must* read for those who would understand the problems faced by Nevada gaming regulators and how these standards have become a model for the rest of the nation.”

Bernie Anderson, Chair, Judiciary Committee, Nevada State Assembly



“I read this book from cover to cover, without putting it down. It captures, in a concise way, the history of Nevada’s gaming laws and their growth, from humble beginnings to the modern era of casino regulation. Faiss’s interweaving of his own experiences adds a human dimension to the story, and his anecdotes left me wanting more. Everyone in gaming should read *Gaming Regulation and Gaming Law in Nevada*—it will greatly increase their understanding of gaming regulation in the twenty first century.”

Thomas N. Auriemma, Vice President and Chief Compliance Officer, Penn National Gaming, Inc., and former director of the New Jersey Division of Gaming Enforcement.



“I can think of no more authoritative and expert voice to provide an historical overview on Nevada gaming law than Bob Faiss. He is the profession’s first “gaming Lawyer,” and an entire generation of legal professionals and their clients have benefited from his insightful counsel. With this important book, these invaluable perspectives are preserved to benefit future generations of lawyers and clients alike.”

Terry Lanni, Chairman of the Board and CEO, MGM MIRAGE.

“No one speaks with greater authority and insight concerning Nevada gaming law than Bob Faiss. This book demonstrates why.”

U.S. Senator Harry Reid, Majority Leader of the United States Senate and former chairman of the Nevada Gaming Commission.

“Bob Faiss changed how the gaming industry is regulated and perceived. Nevada’s leading industry owes a great deal to his leadership and integrity. For anyone interested in gaming law, or simply Nevada’s gaming history, his insights and experience are an invaluable resource.”

Edward P. Roski Jr., economic owner, Silverton Casino Hotel Resort, Las Vegas, Nevada; Chairman and CEO, Majestic Realty Company; and co owner, Los Angeles Lakers of the National Basketball Association and Los Angeles Kings of the National Hockey League.

“Bob Faiss is the dean of gaming lawyers. His oral history of the development of Nevada’s modern gaming regulatory system demonstrates the breadth and depth of his historical perspective, which is an invaluable asset to his clients and the gaming industry throughout the United States. Bob’s soft spoken demeanor, impeccable reputation, and commitment to acting in the best interests of Nevada make him the consummate gaming lawyer. He serves as the guiding beacon for every other gaming lawyer who is striving to advance the profession.”

Robert W. Stocker II, President of the International Masters of Gaming Law and member of the Lansing, Michigan law firm of Dickinson Wright.

“The gaming industry has overcome many challenges and has achieved many triumphs. In my experience, the more difficult and important the matter, the more likely it was that Bob Faiss played a leadership role with respect to it. This book does much to explain why.”

Daniel M. Wade, Chief Operating Officer, the Plaza Hotel, Las Vegas, and former Co CEO and Vice Chairman of MGM MIRAGE.

“Gaming Law and Bob Faiss go hand in hand, and we are privileged to share his insights on the history and structure of Nevada gaming law. Bob’s important contributions continue his development of generations of gaming lawyers, who will support this growing and important industry, ensuring its vitality for the future.”

John Valery White, Dean, William S. Boyd School of Law, University of Nevada, Las Vegas.

GAMING REGULATION AND GAMING LAW IN NEVADA

As remembered by
Robert D. Faiss

From oral history interviews by Dwayne Kling.

Edited by R. T. King.

University of Nevada Oral History Program

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PREFACE

This memoir derives from interviews with Robert Faiss by oral historian Dwayne Kling. It is one product of the University of Nevada Oral History Program's (UNOHP) project on gaming regulation and gaming regulators in Nevada.

Forty years experience in the gaming industry, combined with an impressive record of research and writing on the subject, made Dwayne Kling the logical choice to be our oral historian on this extensive project. Mr. Kling earned a bachelor's degree in economics and business administration from St. Mary's College. After service in the army during the Korean War, he took a job with Harolds Club in Reno as a change person and dice dealer. Kling worked his way up through a variety of positions in several casinos, eventually becoming co-owner and general manager of the Silver Spur Casino, 1971-1981.

After selling that property, he went on to several other management positions in Reno gaming, retiring from The Virginian Hotel-Casino in 1995 as casino manager.

Following Kling's retirement, Ken Adams, the UNOHP's gaming history coordinator, recruited him to work on our gaming history series. Kling received training in the theory and practice of oral history and joined the UNOHP as an associate oral historian in 1996. In addition to his work for the UNOHP, he is the author of *The Rise of the Biggest Little City: An Encyclopedic History of Reno Gaming, 1931-1981*, published by the University of Nevada Press.

Its oral origins notwithstanding, the text of this book reads much like that of any written composition. The verbatim transcripts from which it arises have been edited for clarity and readability, and interviewers' questions that are not contextually significant have been deleted. This revised and expanded edition of the 2006 book of the same title also contains considerable original writing by Bob Faiss.

As with all its published works, the Oral History Program vouches for the authenticity of *Gaming Regulation in Nevada*, but it makes no claim that the recollections upon which the memoir is based are entirely free of error. This is personal history; this is the remembered past. Copies of the recordings of the interviews that are the

source of this book are housed in the Oral History Program of the University of Nevada, where they can be heard by appointment.

UNOHP

October 2008

INTRODUCTION

Few Nevadans have influenced the course of events in their state more, and done it more quietly and modestly, than Robert D. Faiss. In this oral memoir of the history of gaming regulation in Nevada and the role he has played in it, Faiss gives an eloquent, eyewitness account of crucial events and moments. Often left unsaid is his significant role in shaping those events and moments. That modesty is typical of Bob Faiss.

Robert Dean Faiss was born in Centralia, Illinois, on September 19, 1934, the day his father lost his job as a factory worker because of his fight for better working conditions. Spending his early years in Centralia, a small coal-mining town about sixty miles east of St. Louis, helped shape Bob Faiss. He grew up in a loving home with his parents and two brothers, Ronald and Donald, all of whom believed in working hard at what they did.

(Perhaps the location of his early upbringing explains Bob's pleasant disposition—he was geographically closer to the St. Louis Cardinals than to the Chicago Cubs and thus was spared a lifetime of waiting for a World Series victory!)

In 1944, the Faisses relocated to North Las Vegas, which was then a fast-growing, unincorporated town adjacent to Las Vegas. The Las Vegas Army Air Corps Gunnery School was just to the north, and instructors and trainees were filling the area. The family lived behind the filling station that his parents, Wilbur and Theresa, ran while Bob and his brothers went to school.

From this modest beginning in their new home state of Nevada, the Faisses went on to greater accomplishments. By the 1950s, Wilbur had gone to work at the Nevada Test Site and later worked as a warehouseman at a Las Vegas Strip hotel casino. After retiring, he entered politics and won two terms representing North Las Vegas in the Nevada State Senate, where he quickly earned a reputation for hard work and honesty. Bob's mother, Theresa, received the Clark County Pioneer Mother of the Year Award in 1996, and Ron and Don went on to successful careers in the gaming industry.

Bob wound up following paths similar to those of his father and brothers, eventually becoming involved in what is now Nevada's most important industry, gaming, but not without an initial foray into another field. After

graduating from Las Vegas High School, he majored in journalism at the University of Nevada, where he was active in student government. Following his junior year, he returned to Las Vegas to enroll in the first class admitted to Nevada Southern (later the University of Nevada, Las Vegas), but journalism beckoned. As a teenager he already had worked at the *Las Vegas Sun*, which hired him as a sportswriter and soon moved him over to news coverage. So it transpired that, at age twenty-four, he became the youngest city editor in the newspaper's history—but without completing his degree. The University of Nevada, Reno, later awarded him his bachelor's degree in journalism in 2000, well after he had earned a bachelor's degree and a law degree from American University in Washington, D.C. By then, Bob had long since left journalism.

In 1959, Democrat Grant Sawyer took office as governor of Nevada. One of his top aides was Dick Ham, the director of the state Employment Security Department. Ham hired Faiss as the department's public information officer, and Bob relocated to Carson City in September 1959. Two years later, he became assistant executive secretary of the Nevada Gaming Commission, where he created the first state publication on the history, economics, and control of the gaming industry. Faiss's talent did not go unrecognized, and in 1963, as part of the first ever reorganization of Nevada's executive branch,

Sawyer brought him to the governor's office as executive assistant, with duties that included acting both as press secretary and chief speechwriter.

This appointment began a relationship that shaped Bob's life almost as much as the values his parents had instilled in him—and Sawyer shared those values. Of the twenty-eight men who have occupied the Nevada governor's office, Sawyer is perhaps the most important and influential, and his governorship in many ways mirrored the presidency of John F. Kennedy, who was elected two years after Sawyer. Both were liberal-minded, realistic, activist politicians who used a great sense of humor to leaven the issues with which they dealt. In Nevada, Sawyer took steps similar to those taken by Kennedy and his successor, Lyndon Johnson. He retooled and revitalized the state's small, clunky bureaucracy to deal with the rapid growth that was, even then, a hallmark of Nevada, and he pushed for civil rights legislation to overturn Nevada's reputation as "the Mississippi of the West." In a quest for respectability and economic development, he also changed how the gaming industry was regulated, and that is where Bob Faiss came in.

What Sawyer sought to do—and in significant ways accomplished—during his two terms as governor, he continued to do after he left office. Faiss was at the heart of Sawyer's efforts, during Sawyer's time in office and later, and he has continued to pursue those goals since Sawyer's

death in 1996. Not that the protégé has passed the professor, but Faiss, like Sawyer, has become a key figure in Nevada's evolution. He has done this without formally entering politics or running for office as Sawyer did, and he has not been the lightning rod that Sawyer was by dint of his actions and principles, but no history of post-World War II Nevada would be complete without an understanding and appreciation of Bob Faiss's role in it.

First, Faiss has led a life of service. He spent eight years working for the Nevada state government, and he later worked at the federal level, including service as White House staff assistant during President Johnson's last year in office. When he completed his law degree, while working full time as a federal employee, Faiss returned to Las Vegas as an attorney for what has long been the state's largest law firm, Lionel Sawyer & Collins.

The popular image of an attorney is not usually that of a public servant, and that is especially true of a lawyer who represents local, national, and multinational corporations, but Bob Faiss stands that image on its head. In his three decades of representing gaming clients, he has looked out for the best interests of his state. His colleagues and clients have universally respected him and his approach—they see him as a public servant, and so he is.

In addition, Faiss has been part of a revolution in how law is practiced, not only in Nevada, but elsewhere. He

occasionally regales friends with stories of his first trip into a federal courtroom as an advocate, more than a quarter of a century ago, when a judge appointed him to represent an indigent defendant. It also may have been his last trip. Today, public defenders or attorneys specializing in defense work tend to that kind of labor, while Faiss is an administrative attorney who deals with regulatory boards—mostly related to gaming, but in other realms of business, too. That gaming law is today a legitimate, respected field, much like real estate law or probate or intellectual property, reflects how attorneys have increasingly emphasized a particular specialization. It also reflects what Faiss has accomplished. More than anyone else in his profession, he has made gaming law important and respected, and his effort to do that continues, as he teaches the subject as an adjunct professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas.

Not one to seek the limelight, Faiss has spent most of his life promoting and helping others. Sawyer is justly considered one of the most important—if not the most important—governors in Nevada’s history because of his accomplishments, but this recognition of Sawyer’s role also is partially due to Faiss’s loyalty to his old boss, the assistance he provided with Sawyer’s oral history, and his deference to Sawyer’s memory. Bob’s wife, Linda—an accomplished journalist and public relations and political

consultant—likes to say that her husband's hero is his senior partner, Sam Lionel, who at this writing is eighty-nine and is still one of Nevada's ablest and most respected attorneys. She says that, in part, because Faiss, like Lionel, is doing exactly what he likes to do; but it also reflects Faiss's commitment to his law firm, his respect and admiration for the abilities of others, and his willingness to step out of the spotlight so that others can shine.

Historically, Faiss has been at the center of the reinvention of Nevada and its leading industry. As Faiss notes in this interview, when Sawyer became governor, Nevada suffered from a poor reputation. During Sawyer's two terms, books appeared labeling Las Vegas a "green felt jungle" and Nevada a "great rotten borough." Attorney General Robert F. Kennedy targeted Nevada for attack and did nothing to hide his disdain, even for those in Nevada who had loyally supported his brother's presidential campaign, like Governor Sawyer; and FBI director J. Edgar Hoover regularly attacked links between organized crime and casino gaming in Nevada, getting publicity for himself while doing nothing about the problem.

In an effort to improve others' perception of his state, Governor Sawyer created the Nevada Gaming Commission and the *List of Excluded Persons*, and Faiss played a role in those changes. Later, Sawyer also opposed revising state law to allow corporations to own casinos,

believing that organized crime would use publicly traded companies as fronts. He was right, as films like *Casino* demonstrate, but eventually corporations supplanted those allegedly tied to organized crime, and Sawyer and his law firm went on to represent many of these corporations. In all of this, Faiss was, as he had been before, Sawyer's "details man," and he succeeded Sawyer as the sage of gaming regulation and law.

In the process, Nevada and the casino industry went through a bloodless revolution that made gaming even more successful and profitable. At the time Kirk Kerkorian built the International and his two MGM Grands, they were the nation's largest hotels. Steve Wynn—of Mirage Resorts and what eventually became Mandalay Resorts—joined Kerkorian and the Venetian's Sheldon Adelson in creating a series of mega-resorts that altered the skyline and purpose of Las Vegas, which went from emphasizing gambling to offering gambling as part of a broader leisure experience of dining, shopping, entertainment, and accommodations. Scholars have pointed to Las Vegas as a prototype and important element of the post-World War II, post-industrial society in which Americans turned from blue-collar industry to a white-collar service industry tied to improvements in transportation and the enhanced importance of vacation and free time. Corporate gaming has been a crucial factor in this evolution, and no attorney

has played a greater role in the rise of the casino industry and how it is regulated than has Bob Faiss.

Faiss brings to mind a line by Walt Kelly, the legendary creator of the comic strip *Pogo*: “It makes you humble and sort of proud.” As contradictory and ironic as that may seem, it describes Faiss. He is humble about what he has done, crediting others for making him what he is, but he also is proud of what he has accomplished, as he should be. Faiss is responsible for many important parts of the *Nevada Revised Statutes* and the regulations that the Nevada Gaming Commission and the Nevada Gaming Control Board use. He also was a key attorney in the growth of several major Nevada gaming corporations: Howard Hughes and his Summa Corporation, Del Webb, Barron Hilton and Hilton Nevada Corporation, and Kirk Kerkorian’s MGM, to name just a few. When the Hughes and Webb corporations divested themselves of their casinos, Faiss was the gaming attorney, and in handling the myriad legal details in these deals, he helped engineer their move into local development while setting the stage for the mega-resorts that have grown from or replaced those older hotels.

Any list of Faiss’s accomplishments would be impressive. He appeared in *100 Most Influential Lawyers in America*, the only Nevada attorney ever to be selected for that exclusive list. For three decades, he has

represented the gaming industry at the state legislature. From 1998 to 2003, he served on the U.S. Treasury Department's Bank Secrecy Act Advisory Board as the representative of the U.S. casino industry, and he was a charter trustee and president of the International Association of Gaming Attorneys, which has given him its lifetime achievement award. He also was offered (and politely declined, since he preferred to remain a practicing lawyer) consideration for appointment as a federal judge—a long way to go for a filling-station owner's son, and a long way to go for an attorney specializing in a business that has gone from being a pariah to a respected industry.

With all of this, Faiss might strike the unknowing observer as the image of the superior corporate attorney: reluctant to discuss his work (as required by attorney-client privilege), well dressed, well spoken, and a great listener. That is true, but he also is the sum of his parts. His parents instilled in him a belief in hard work and public service, and his wife and family remind him that there is more to life than work and service, and that his work and service affect present and future generations. All of these people, together with those for whom he has worked, from Sawyer to *Las Vegas Sun* publisher Hank Greenspun, instilled in him a social conscience, a desire to do what is best for society in general and for his home state in particular. More than that, he is devoted to his friends and idols, from Sam Lionel and Grant Sawyer to Stan

Musial, one of baseball's all-time great hitters. In an age of tabloids and corruption, Faiss still stands for the old virtues of hard work and loyalty.

Those characteristics are reflected in his personal life. He dotes on the accomplishments of his three sons—Michael, Mitchell, and Philip—and Linda's two children, Marcy and Justin, whom he adopted. Through them, he has welcomed grandchildren Stephanie, Branden, Adelaide, Kristopher, and Eliza, and great-grandchildren Malia, Brent, and Blake. When he and Linda moved to Boulder City, they quickly became part of that small, close-knit community. Not only did they get involved in numerous activities, but Bob also ended up hosting a public-access television program featuring friends and newsmakers. Gary Elliott, the historian who conducted Grant Sawyer's oral history, once appeared on Faiss's show. He later said of Faiss's earnest style of questioning, "If Bob had been prosecuting O.J. [Simpson], he would have looked at him and said, 'You did it,' and O.J. would have confessed on the spot."

Finally, please allow a personal word that might go a little further to explain Bob Faiss. He is a delightfully droll companion, and, as much as he would hate to admit it for fear of being put on the spot, a fine mimic. He laughs easily and is a gifted raconteur, although he prefers to listen to others tell their stories. But he has his own. Maybe it is enough to tell one tale:

Bob adopted Linda's son from a previous marriage, Justin Cooper. Justin lived in Reno and was a radio personality, appearing as "Dangerboy," a stuntman on a morning show, and hosting a music show in the evening. During a visit to northern Nevada, Linda and Bob went to the station, and Justin put them on the air as "Dangermom" and "Dangerdad." Justin asked "Dangerdad" to say something to the audience. Bob replied, "Son, we're proud of you. Only in America could someone be paid good money to play records while sitting around in his underwear."

Justin Cooper was doing what he loved. Bob Faiss is the same way. Happily for Nevada, the state and its most important industry are far better for his work.

MICHAEL GREEN, PROFESSOR OF HISTORY
COMMUNITY COLLEGE OF SOUTHERN NEVADA

DWAYNE KLING: *With passage of AB 98 in 1931, Nevada legalized the operation of gambling casinos. How did the state go about regulating and controlling this activity?*

ROBERT D. FAISS: The legislative act that authorized casino gaming was a bold move, but it could have benefitted from more careful study. After the first act was passed, it had to be recalled for amendment. Although the act made it clear what gaming activity was legal, it did not assign enforcement authority to anyone. In the amended act, the legislature delegated enforcement to local government. State government received a share of licensing revenue, but it had no say in licensing or enforcement. The only legislated qualification for licensing was that the applicant be a U.S. citizen.

For the first fourteen years that casino gaming was legal in Nevada, gaming regulation remained strictly the province of county sheriffs and incorporated cities. The

gaming license was treated as just another business license, and there were no eligibility standards. Then, in 1945, the legislature enacted a quarterly state license fee on casino gross revenue, which was the net cash won on wagers, and the Nevada Tax Commission was assigned responsibility to issue licenses and collect the fee. Local licensing and control of gaming were left undisturbed, and today Nevada continues to have this dual-system responsibility for gaming enforcement. I believe this system is unique.

The 1947 murder of Benjamin “Bugsy” Siegel, the developer of the Flamingo Hotel on what since has been denominated the Las Vegas Strip, motivated stronger state involvement in gaming regulation. Attorney General Alan Bible, later to become a distinguished U.S. Senator, opined that the Tax Commission had the authority to consider a license applicant’s background and to deny the application if it found the applicant unsuitable. Nevertheless, the Tax Commission lacked much in the way of investigative resources.

It was not until 1955 that gaming license investigation and enforcement was given a structure with the creation of the State Gaming Control Board. The first person appointed to it was Robbins Cahill, who was then serving as executive secretary of the Nevada Tax Commission. (The 1955 act specified that the executive secretary of the tax commission could also serve as the executive

secretary of the new Nevada Gaming Control Board.) The other two original members were Newell Hancock and William Sinnott. None of the first three appointees was from southern Nevada, and all three were stationed in Carson City. The southern Nevada properties felt a little left out, unrepresented.

At a certain point, the Tax Commission became concerned about what it called “overbuilding” in southern Nevada, and it refused to approve a licensee on the basis that there wasn’t sufficient business. That started a tremendous regional fight over gaming regulation. It evidenced the longstanding feeling that Las Vegas had kind of been the stepchild for government regulation of all kinds, including gaming control.

What happened was this: In February 1956, the tax commission adopted a regulation that stated a license could be denied if additional competition was deemed harmful to the public welfare. Then a member of the tax commission said that the economic climate in Las Vegas would preclude building any new hotels then. The rule was adopted at about the same time that developers of the proposed Hacienda Hotel filed an application for a gaming license, so theirs seemed doomed. Eventually, however, the Hacienda *was* licensed.

Since the 1960s there has been a gradual shift recognizing the greater prominence of southern Nevada in the affairs of the state. It’s up to the governor to

determine who best represents the style of gaming control he feels is important for the state, and in 2002 Governor Kenny Guinn appointed a Las Vegan to the Nevada Gaming Commission, giving it four members from southern Nevada for the first time in history. In 2009, appointments by Governor James Gibbons gave southern Nevada all five seats on the Gaming Commission.

The creation of the gaming commission gave Nevada a two-tiered regulatory system. What were the major differences in authority and responsibility between the board and the commission?

The Nevada Gaming Commission replaced the Nevada Tax Commission in 1959 as the body overseeing gaming licensing and regulation in the state. The first commissioners had no precedent to follow—there had been nothing like the Gaming Commission in the history of the world, so almost everything they did was done for the first time. Since then, the Nevada Gaming Control agencies have served as models for gaming control systems everywhere.

When the commission was established, the Gaming Control Board continued to be the state's day-to-day investigative and enforcement agency for gaming, as it always had been. Serving on the board was (and is) a full-time job, and the people appointed to it were professionals

who met certain specifications. They worked daily, and almost around the clock, to protect the gaming industry from bad outside influences, to enforce the laws, and to govern it.

The day-to-day burden of gaming control falls on the Gaming Control Board. Governors historically have been careful in their appointments to this agency, and I cannot recall any time when the citizens of Nevada had reason to be disappointed in the quality of the service of those appointees. The control board members in 2008 are among the most experienced of any ever to hold that office, and that experience has given them the confidence to make ground-breaking decisions without hesitation.

His appointment to office by three consecutive governors, Democrat and Republican alike, attests to the quality of Chairman Dennis Neilander. An attorney, he earlier served as counsel to the legislative committees that shaped gaming law and later as chief of the board's corporate securities division, which investigates and regulates public companies. He has an unassuming manner but is a resolute leader.

Historically, although appointees to the control board have been of top quality, none had significant gaming industry experience. This is contrary to the general thought that appointees to government regulatory boards should know something about the industry they are to regulate. Mark Clayton, appointed to a four-year term in 2005,

was the first control board appointee to bring industry experience to control board decisions. He earlier served as general counsel to three public gaming companies and as chief of the control board's Corporate Securities Division. His experience allowed him to take the lead in resolving differences of interpretation between the gaming industry and the control board, some of which had festered for years. At the completion of Clayton's term at the end of 2008, Governor Gibbons appointed a successor who also had extensive industry credentials. He is Mark Lipparelli, who has extensive experience as a lead executive in public gaming companies, was the owner of a technology development company and served for five years as a research and securities analyst for the Control Board.

The third member is Randy Sayre, who had won acclaim not only for his leadership of the Control Board Investigations Division but also for his leadership in Nevada's contribution to the U.S. effort in Iraq as a brigadier general in Nevada's National Guard. In the past, control board members made the final decisions on license applications and other important matters but were not involved until they received the investigative reports, sometimes only a few days before the decisions were to be made. Because of his experience in the investigative process, Member Sayre has often gone into the field in the preliminary stages of investigations to ensure they are

structured to give the control board the information it needs for reasoned decisions.

With the creation of the Nevada Gaming Commission, the control of policy regarding gaming control was given to representative Nevadans. The idea wasn't to put technicians on the commission, but people with the philosophy and values of those who led Nevada in all different sectors of activity. After the technicians and the police professionals on the board had done their jobs, the commission made decisions—based upon its members' experience—as to what was best for the future of Nevada. They were not a police body at all; they were a *policy* body.

From the beginning, the commission considered itself independent of the Gaming Control Board, but that independence was not always as clearly evident as it is today. They are unafraid to interpret the law and regulations differently from the board. People coming before the commission today can be confident that even though the board's audit division, for example, may have made a decision against them on tax interpretation, they will still be treated fairly, and their views will be given equal weight and consideration by the commission. It's not unusual for the commission to rule against the board in a contested matter.

The commission's current confidence in its role and authority evolved over time. Over the years, particularly

early on, some commissioners thought that their role really was to be an extension of the board, and very seldom would they vote against it. Others were truly independent and held the board to the same standards of evidence and proof as the people appearing before them. There were periods where you'd find it likely that in a contested matter the board position would prevail, but that hasn't been the case, in my experience, over the past twenty-five years.

Nevada's gaming industry was already mature when the commission was established. Commissioners didn't have a blank slate upon which to write. For example, they had to deal with early licensees who might not have met the exacting standards for licensing that were later developed. The commission made sure they obeyed the law, however, and some of the people who had checkered pasts when they came to Nevada turned out to be among the finest licensees and the most ethical in their conduct.

The commission in 2008 was a wonderful example of common sense, integrity, and independence. Its Chairman is Peter Bernhard, a Harvard-educated business attorney with extensive experience in gaming law, who commands every commission hearing with a strong hand and insightful questions. The backgrounds of the other commissioners are varied but have a consistency of professional success and involvement in efforts to improve Nevada. They are Art Marshall, a notable humanitarian

and pioneering business leader, who takes a practical approach to resolution of issues; Sue Wagner, former lieutenant governor of Nevada, who, as a legislator, was instrumental in passing many of the gaming laws she enforces; Radha Chanderraj, who combines the best attributes of lawyer and businesswoman with her commitment to fairness; and Dr. Tony Alamo, a product of a legendary gaming industry family, who had an outstanding record as a member of the Nevada Athletic Commission and has demonstrated a willingness to require that administrative tradition prove its current value.

The membership changed in April 2009 with the retirement of Marshall and Wagner, but the appointments of two leading figures in the fields of government, business, and law were expected to maintain the same quality of performance.

The new members are Las Vegas attorneys John Moran, Jr., and Joseph W. Brown. Moran formerly served on the Gaming Commission and as chairman of two major Nevada state boards. Brown saw service as a member of the U. S. Foreign Claims Settlement Commission and as Chairman of the Nevada Development Authority.

In new gaming jurisdictions, in other states, there's often great apprehension, if not fear, about the gaming industry. You'll find these jurisdictions putting in all kinds of artificial controls to protect against problems without any real understanding of what the problems might be.

When Governor Sawyer created the gaming commission, did he issue it a mandate?

He did, and the mandate turned out to be the title of his oral history, which is *Hang Tough!* In his first charge to the commission, he said, “If there are any members of the underworld in the gaming industry, get them out. If they are not here, keep them out. I want you to hang tough!” His gaming control program came to be known by this term—it was an unyielding policy. Sawyers’ first commission was a very good commission, and it took seriously its responsibility to be firm but fair. The commissioners did not back down from any challenge.

We have not, unlike many other jurisdictions, ever had any accusation of illegal conduct by a member of the board or commission. That reflects the care that every governor has used in appointing people to them. Governor Sawyer set the standard. He made sure that his appointees were fully qualified and that they had experience in some field of which they were at the top . . . and also that each had an unblemished reputation.

The most important thing Sawyer did—and it’s something that is not reflected in some other jurisdictions—was that he took politics out of the licensing and enforcement process. The governor had actually chaired the Nevada Tax Commission, but when the

gaming commission was created to replace it, Sawyer took the governor out of any relationship to that body, outside of appointing them. After that, to my knowledge, governors seldom played a role in telling them what they should be doing except generally in their role as chairman of the Gaming Policy Committee.

The first five members of the commission were Miles Pike, who was a Reno attorney and became the first chairman; Milton Keefer, former FBI agent and an attorney; Norman Brown, a rancher from Smith Valley; James Hotchkiss, who owned an armored car service in Las Vegas and was a former FBI agent; and Pete Walters, who was a realtor and developer in Reno.

Miles Pike left the position about five months after he was appointed, and he was replaced as chairman by Milton Keefer. Then Bert Goldwater, an attorney, was appointed to replace Keefer as a member. The terms were, and are, four-year terms, and when a member leaves before his term expires, the replacement appointment is only for the remainder of the unexpired term.

As opposed to the situation at the Gaming Control Board, being a member of the commission is not a full-time job. (Commissioners can spend whatever time on commission business that they feel is required.) However, the *chairman's* job in recent years *has* become a full-time job. You won't find one in recent years that hasn't worked

a minimum of thirty-five hours a week, even though they're trying to work at least that much on their own job.

In the beginning, commissioners were paid only \$25 per meeting—the state thought it was a privilege for them to serve. Gradually, over the years, the legislature gave them a salary and slowly increased it, but no staff help at all. Until the 2001 session of the legislature, their total staff consisted of a half-time executive secretary, and they had no independent budget.

In the early years, the commission regularly alternated its meetings between northern and southern Nevada, but the Gaming Control Board did not. By statute, the Gaming Control Board had to meet in Carson City, which was a great burden to the burgeoning gaming industry in southern Nevada.

We were once meeting with the chairman of the control board, Richard Bunker, and we were talking about amending one of the statutes. I said, “While we’re at it, can’t we take away this requirement that the board meet only in Carson City?”

Chairman Bunker said, “That’s fine with me.” Now the board can meet anywhere it wants, and it alternates concurrently with the commission between north and south.

In the early years of the commission, what role did the attorney general’s office play in the regulation of gaming?

In the real early years, Senator Alan Bible (then the attorney general) did a splendid job. He was the first to issue an opinion telling the Nevada Tax Commission that they had the authority to consider a person's background in deciding whether to grant a license. Before his opinion, it had been considered a ministerial act—when somebody applied for a gaming license, it was just like a business license: you just made sure you got the money, and you gave them the license. They really didn't think they had the authority to consider suitability. In his opinion, he told them they did.

At the outset, the Nevada Gaming Commission had no legal help in its actual day-to-day administration. It was during the time I was there, between 1961 and 1963, that the first attorney was assigned to the Gaming Control Board. His name was Norman Samuelson. He and I shared the same office, and we both worked with the commission and the board.

In 1963, Governor Sawyer reorganized state government, and I was one of several persons appointed to new positions as a result. Dick Ham was executive assistant to Governor Sawyer at the time. (Executive assistant was the same as "chief of staff," and he ran the governor's office.) The reorganization created a super administrator, sort of a deputy governor, with the title, "executive administrator." That position had authority over not only the governor's staff, but all the staff throughout

state government, and Grant Sawyer appointed Dick Ham to fill it.

The reorganization did not change the function of the executive assistant as chief of staff in the governor's office, and Governor Sawyer asked me to move into that position. As chief assistant to the governor, I was involved in everything he did. Dick Ham retained a number of his duties, and Governor Sawyer looked to him for any major policy matter.

We created a public information program for the governor's office, and I was the primary contact with the news media. I also assisted the governor in writing speeches. He felt a great obligation not to turn down an invitation from the public to join them, and one year he gave more speeches than there were days in the year! (I think he gave about three hundred and ninety speeches that year.)

I had the job of coordinating the governor's speeches and making sure that he had something fresh to say each time he spoke. I worked with him on news conferences and doing the physical arrangements; assisted the coordination of any public appearance he made; and worked with the direction of the letters that were prepared for the governor's consideration, most of which he altered to give some personal touch.

I traveled with the governor frequently. We'd always try to have one person with him, because there was just

such a crush of people around him. Everybody wanted to see him, and somebody had to be there to take notes and make sure there was a proper follow-up, so the governor didn't have to rely on his memory. We had to keep him on schedule. He was notoriously late, because he never wanted to end a conversation or leave an event. And without somebody there to remind him what time it was and to ease his departure, he would have been hours behind instead of just several minutes behind throughout the day.

During your time in Carson City with Governor Sawyer, there were veiled threats of federal intervention in Nevada's gaming industry. What were some of the steps Governor Sawyer took to prevent possible intervention?

In 1961 there was a plan by the Department of Justice to actually have a task force invasion of the gaming industry—to come in and collect records and make other demands—which Governor Sawyer single-handedly managed to stop by a direct appeal to President Kennedy. He developed a great rapport with the president. I think President Kennedy cared a lot about him, not only because Grant Sawyer had been one of the few people in the West to step forward and support him for president, but perhaps because Governor Sawyer was the same type of youthful,

dedicated, talented leader that President Kennedy personified.

Governor Sawyer established rapport with the person who ran federal government, and, by his great improvements and innovations in gaming control, he demonstrated to the public that he was an incorruptible leader who cared about doing the right thing. That gave him an image such that when he spoke, people paid attention to him nationally.

However, Governor Sawyer didn't convince some members of the FBI that Nevada gaming was clean, and he didn't convince Attorney General Robert Kennedy. We had a great deal of illegal wiretapping by federal agencies of people in the gaming industry at the time.

J. Edgar Hoover did a lot of great things, but, as we found out later, he did some things that shouldn't have been done. Grant Sawyer was a great liberal and a great protector of the Bill of Rights, and he felt that Mr. Hoover abused them in some respects where Nevada was concerned. They were not friends at all. As evidence of that, in Governor Sawyer's final gubernatorial campaign, for the first time in history, the FBI director publicly condemned a governor: Grant Sawyer.

Hoover and others in Washington, in positions of power, felt that Nevada gaming was corrupt, and that both the state and the nation would be better off if we did not

have it. If they had had their way, they would have ended gambling in Nevada. There's a great possibility that, but for Grant Sawyer, we would not have the gaming industry in the state that we have today.

Were you actively involved in Governor Sawyer's campaign for re-election in 1966?

Yes, I was. A very hard-fought campaign, and it marked the emergence of what is common now, in that it started a long time before the traditional campaign period. He'd been under attack from opponents for months. When the campaign was over, we looked back on it and saw him putting in an extraordinary amount of effort and time without taking any time away from his official duties.

How big a role do you think Grant Sawyer's differences with J. Edgar Hoover played in Paul Laxalt's defeat of Sawyer?

Well, the defeat wasn't that great. If any one of various things had not been factors, Grant Sawyer would have won. If we hadn't had that public battle with the FBI, which was a very respected American institution, and deservedly so . . . that alone, I think, would have made the difference. Grant Sawyer would have won.

We had a depression at the time. The employment at the nuclear test site was off. Many of the people who had worked at the test site, who were Sawyer supporters, did not have work at the time. Many had left the state; that was another situation. If the economy had been better at the time, that would have been enough to win, but it wasn't. So, without the involvement of J. Edgar Hoover, I think the course of history would have been different, and Grant Sawyer would have been re-elected.

Do you think the fact that he was running for a third term had any effect on the election?

Yes, it certainly did. No one had ever been elected to a third term. When he ran for election the first time against two-term Governor Charles Russell, it was used against Governor Russell: "Two terms are enough for anyone." There were some people who felt that way, that one person just shouldn't be in office for that long a time. There's no doubt we lost votes from people who respected Governor Sawyer but just felt that it was time for a change.

Another factor in that 1966 campaign was that we had a very vigorous Democratic primary. Had Governor Sawyer not been challenged by two prominent Democrats, which weakened him, I'm convinced he would have won. Ted Marshall was the district attorney for Clark County,

and Charlie Springer had been attorney general for Nevada. Springer had been appointed by Grant Sawyer. He was a liberal Democrat, and District Attorney Marshall was considered a conservative. So Governor Sawyer had both extremes of the Democratic Party against him in the primary, and I think that weakened him. Without that, if he'd gone into the general election with a united Democratic Party, I think he would have won, despite all the other problems.

After Governor Sawyer left office, what did you do?

For no reason at all, I decided I wanted to get a couple of years of federal experience. When I told Grant Sawyer I was going to go to Washington, he agreed to make some telephone calls and set up some interviews for me. One appointment that he made for me was with the White House, and I was interviewed by Doug Nobles, the principal assistant to Marvin Watson, who was chief of staff for President Johnson.

Nobles took my résumé and set up a couple of appointments for me that later turned into job offers, but by that time I had found a job on my own in the Office of Economic Opportunity, better known as the agency leading the "War on Poverty." I joined that program as an inspector, with responsibility for going out and reviewing

programs to make sure that they were consistent with law and doing the job that the president wanted done. I was in that position for a year.

At the beginning of 1968, a presidential election year, they were trying to restructure the White House. Unbeknownst to me, Doug Nobles had kept my résumé. (Apparently he was impressed with me for some reason.) When some of the assistants left the White House to join the expected Johnson presidential campaign, I was hired to replace one. As it turned out, to my knowledge, I was the last person hired for the presidential staff, because on March 31, 1968, President Johnson announced that he would not run for re-election, would not accept the nomination from his party. People started leaving the administration, getting established in private business before the administration ended at the end of that year.

My title was “staff assistant.” (I have a commission of office signed by the president and the secretary of state.) My first office was in the executive office building across the hallway from the vice-president. I later moved into the West Wing, where I had a corner office looking out over Pennsylvania Avenue.

My job was to work as assistant to the appointment secretary, who was the chief of staff, Jim Jones. People continued to leave, and by the time Jim Jones and I left in January of 1969, I was filling the responsibilities of three

assistants. The White House had simply combined duties as people left.

You must have had a strict background check before you were given that job. How did that background check compare to a background check given to an individual seeking a Nevada gaming license?

Even the most inconsequential position in the gaming industry is dealt with very carefully, if licensing is required for that position. I had a top security clearance to work as a staff assistant to a president of the United States, and the personal intrusion on me when the FBI conducted that investigation was inconsequential in comparison to a typical gaming license investigation.

With the FBI investigation, you don't know what's going on. They do a thorough job of determining whether you're a security risk, whether you have anything in your background that would allow you to be blackmailed, and that you are an honest and reliable person. There's no question that that background check works, but for a gaming license you have to prove so much more! It's the most intrusive process I've ever been involved in.

Gaming agents actually almost move in with you, checking everything you've done: looking at your tax records; looking at your personal correspondence file, your

business correspondence file; looking at your greeting card list to see whom you care enough about to send greetings to on holidays. They look at your will, seeing who you care enough about to leave your estate to; look at every partnership in which you've been involved, making sure you haven't been involved with unsuitable people; and look at your ability as a business person, to make sure that you can adequately function as a licensee . . . and other things that simply aren't present in the most rigorous security clearance of the federal government. One example of the intrusion of a Nevada gaming license investigation is that agents will make a surprise visit to an applicant's business office and demand to review all messages in his or her email and to examine any document they find in the office.

After President Johnson left office, you went out and looked for another job, I imagine.

Yes. When I was in the governor's office, I had worked with an agency called the United States Travel Service (USTS), an agency within the U.S. Department of Commerce. It functioned as the tourism office for the United States in bringing tourists into our country to improve the balance of payments. It was fascinating work, and so I accepted the position of assistant to the chief executive officer of that agency, Will Arey, and was able

to work in programs that attracted tourism into the United States.

One of the things on which I worked was a tourism mission by Governor O'Callaghan to Australia and the Far East. Richard Nixon was president at the time. The assistant secretary for tourism who headed the USTS, C. Langhorne Washburn, was a political appointee, and he was questioned about why he had a Democrat and former member of Lyndon Johnson's staff working for him. He said, "Because he does a good job."

I told him I understood politics, and if it would make things easier for him, I would be glad to resign. He said, "No, forget it. You're doing a good job, and that's the only thing that's important to me."

Later on I was selected by the Nixon White House to carry a message from the president to a tourism conference of Latin American countries in Peru. I was chairman of the United States delegation to that conference.

I had been so busy being a professional that I still lacked some credits for my undergraduate degree, so I went to American University at night and completed the qualifications for a degree in journalism. I then began going to law school when I was working at the Department of Commerce, and I completed a four-year night program in three years by going year-round.

I did not go to law school because of any great love of the law. I have developed that since I became an attorney,

but when I was in government, I saw that people who were not attorneys got left behind by their peers. When they left government, they almost had to start over, but those who were attorneys had enhanced their ability to function outside government—the experience they had in government allowed them to command better positions.

I just thought it made sense to have a law degree if I ever left government. I was not planning to leave at the time, but if I were going to have an advanced degree, I thought it should be in law. I had no greater thought about it than that.

At first, when I looked at the burden of going to night school for years after demanding days at work, I thought that was a lot to undertake. I made the decision that I would seek a master's degree in journalism instead. I had taken the law school admission test and had performed well on that, so I could go to any of the colleges in the Washington area, but I decided I might better spend my time just getting a master's degree in journalism.

Grant Sawyer came to Washington after I'd made that decision, and as we usually did when he came back, we played golf. As we were walking off the eighteenth green, he said, "How are we doing on that law school business?"

And I said, "Oh, Governor, you know, I really don't think that's for me. I've decided I'm going to get a master's degree in journalism."

And he paused and said, “Oh. Well, I’m really disappointed. I thought maybe you’d get your law degree and come back and practice law with us in Nevada.”

I said, “OK, I’ll go to law school!” [laughter] And that’s how my life was changed in one additional way by Grant Sawyer.

When you got your law degree, did Governor Sawyer take you right into his law firm?

I had to come back and interview with the firm, but he had made it probable that they weren’t going to turn me down because of my background. My grades were good. Even despite the disadvantageous situation of working full time, I managed to graduate in the top 10 percent of my class, and I won a number of awards for having the highest grade in the class. So I’d had a reasonable academic career, and I met Lionel Sawyer & Collins’s standards.

When was Lionel Sawyer & Collins founded?

The month after Grant Sawyer left office in January of 1967. He joined with Sam Lionel, who at the time was regarded as probably the best legal practitioner in the state, with a tremendous reputation, wonderful work habits, the

highest ethics, and a strong business sense. Together, they started something that's established records of various kinds ever since. There was one associate with Sam Lionel who joined with the new firm of Lionel & Sawyer, and then Jon Collins came in later as a name partner, and the firm still bears his name.

Sam Lionel is worthy of special mention. A native of New York, Sam fought with the 5th Army in World War II. He won five battle stars. He later served with the Judge Advocate General's Corps (JAGC) at the Pentagon during the Korean Conflict and then taught at West Point. Sam is a retired lieutenant colonel JAGC.

Sam arrived in Las Vegas in 1954, the same year I was graduated from Las Vegas High School, and later opened his own firm. Among his clients were Howard Hughes, for whom he played a lead role in major land transactions, and Kirk Kerkorian, one of the most influential figures in gaming history. Sam served for thirty years on the Nevada Board of Bar Examiners, which determines who is qualified to practice law in this state, some seventeen of them as chairman.

At the time you joined the firm, were they pretty much established in the forefront of Nevada gaming law firms, or were they involved in all sorts of legal activities?

Well, it was a general-purpose firm. Gaming law wasn't really recognized as a specific section of practice at the time. Governor Sawyer represented gaming clients, but if you had asked him what kind of an attorney he was, I think he would have said, "I'm an attorney. I represent clients."

Because of my relationship with Grant Sawyer, I was assigned to work with him in cases involving the gaming industry, but I took assignments from anyone in the firm and had a great diversity of practice in my first years. It was only later that I gradually began to concentrate in gaming law, and we finally were able to achieve, over a number of years, recognition of gaming law as a specific area of practice.

At the time I joined the firm, I was sixteenth on the letterhead. We didn't have a gaming law department—there wasn't any specialization at all. It took a long, long time for us to convince ourselves that we should divide into departments of specialization. We now have three departments: we have a regulatory and gaming law department, which I serve as chair; a commercial law department; and a litigation department. All of what we do somehow fits into those three departments.

When the departments were created, Grant Sawyer was the first chairman of the gaming and regulatory law department. I became acting chairman when he suffered

his medical disabilities and then became the chairman upon his death in 1996.

Looking back, I believe stability of leadership with an appreciation for innovation have been strengths of the firm. Sam Lionel has always been the central figure, and the three department leaders have been with the firm for more than thirty-five years. Paul Hejmanowski has been the firm's only managing partner and the leader of the litigation practice. Jeffrey Zucker has been the only chairman of the real estate and business law practice. You will find the names of Sam, Paul, and Jeff on practically all the lists of best attorneys in Nevada. Despite their longevity, they all have been open to change, consistent with the goals of the firm.

The firm has registered many historic "firsts" in licensing. Would you tell us about some of them?

Throughout most of its history, thanks in large part to the leadership and foresight of founding partner Grant Sawyer, Lionel Sawyer & Collins has fielded the largest and most experienced gaming law practice group in the country. We were privileged to have been given assignments from clients that allowed us to be involved in many firsts, not only in gaming licensing but also in gaming litigation and legislation.

The membership of our gaming law practice group has changed over the years. Five of its members—Ellen Whittemore, Charles McCrea, Rory Reid, Tom Peterman, Marc Rubinstein and Joe Cain—became corporate counsel of gaming companies. Whittemore, McCrea and Reid returned to the firm, bringing with them valuable public company experience. John Bailey left to open his own firm. Tony Cabot and Greg Giordano left to head gaming law practice groups at new Nevada firms. Mark Brandenburg resigned to own and operate the historic Golden Gate Hotel and Casino.

As of 2009, our firm had twenty-one gaming law counsel. In addition to Whittemore, McCrea, Reid, and me, they included Richard H. Bryan, former Nevada Attorney General, Governor and U. S. Senator; Dan Reaser, the co-chair of our gaming law practice group and former Nevada chief deputy attorney general for gaming; Brian Harris, former legal counsel to the governor of Nevada and former member of the Nevada Gaming Control Board; Paul Larsen, an authority in federal currency and suspicious transaction law and in casino land approvals; William McKean, who has recognized expertise in solving property tax problems that face resort owners and developers; Gregory Gemignani, a leader in U.S. and state law relating to intellectual property, electronic wagering, gaming-related contracts and race and sports

books; Laura Granier, whose practice is concentrated on Northern Nevada local business, liquor and gaming licensing; Douglas Cannon, who focuses on protection of water rights and Northern Nevada land use regulation issues; Susan Myers, former legal counsel for the New Jersey Casino Control Commission; Jennifer Roberts, who was selected by Casino Enterprise Management magazine as one of the ten chosen as “The 2008 Great Women of Gaming,” and one of the best in restricted gaming and liquor licensing; Trevor Hayes, the firm’s lead legislative advocate in the state capital; Jennifer DiMarzio, a gifted writer who has written some important gaming law opinions; and Lucas Tucker and Lauren Calvert-Arnold, who, as gaming law students at the William S. Boyd School of Law, won scholarship awards and who are authors of gaming law articles. A 2008 addition to the gaming law practice group was Brin Gibson, a member of one of Nevada’s most distinguished families, who has shown an aptitude for international gaming law. In January 2009, after completing one of the most productive terms in history as a member of the Gaming Control Board, Mark Clayton joined our gaming law practice group.

Richard Morgan, the founding dean of the William S. Boyd School of Law, enhanced our gaming law practice group when he joined us after his retirement. He has become a noted lecturer and writer in the field of gaming law and industry ethics and in 2008 was serving as the

chair or member of compliance committees of three gaming companies. Dean Morgan also has a special place in gaming law education by inaugurating a move to make the Boyd Law School number one in the world in that endeavor. His pioneering work has been continued in splendid fashion by Dean John White, who has added some new dimensions to Dean Morgan's original concept.

Although we value the firsts in gaming law in which our attorneys played a part, we always caution that others outside the firm deserve most of the credit. What we accomplished would not have been possible without clients who entrusted us with issues and who provided vital resources and guidance in solving them; state and local gaming control regulators who were fair, cooperative and willing to share their experience and wisdom; legislators who had the courage to act on controversial issues; and judges who made reasoned decisions based on relevant facts and applicable law.

So, when I describe gaming law firsts in which I and other Lionel Sawyer & Collins attorneys played a role, it is with grateful recognition that they would not have been achieved without contributions from others.

With that said, following are some of the gaming law firsts that hold a special place in my memory:

❖ The licensing of the first African-American as a member of a gaming public company board of directors.

That was Robert Johnson, a director of Hilton Hotels Corporation, the founder of Black Entertainment Television cable network and the owner of the NBA Charlotte Bobcats. Johnson was not the first African-American to serve as a director of a public gaming company, but he was the first to complete the licensing process. That was meaningful to me, not only because he is one of the leaders in this country, but also because Gov. Grant Sawyer, my mentor as governor of Nevada and my law partner, was the first to break the color barrier in Nevada casinos in the late 1950s.

Another first associated with civil rights was the selection of members of the first Nevada civil rights hall of fame in 1994. Because of my association with Governor Sawyer, I was invited to be installation officer.

❖ The 1983 legislative act that, for the first time in Nevada history, made casino patron debts collectible by court action. This was a major breakthrough in gaming law.

Gaming debts had always been legally unenforceable in Nevada, because our first legislature adopted the law of England to have effect when there was no state statute governing the matter. As a result, the English Statute of Anne, which made wagering debts unenforceable, was Nevada law until 1983.

Before then, although Nevada casinos had been granting some \$42 billion in gaming credit annually, they had made no move to seek a law giving legal status to such debts. There were two reasons for this inaction:

First, many casinos were regularly achieving a debt collection rate of 90 percent. Second, if gaming debts were made enforceable, casinos could have been subjected to immediate and substantial federal tax consequences. The prevailing interpretation of tax law allowed casinos to pay federal tax on gaming debt instruments at the time they were collected, rather than at the time they were created.

Both of those reasons had lost viability by the time the Nevada Legislature convened in 1983. With respect to the collection rate, it had dipped to the lowest rate in years. This was blamed on a general weakness in the economy and the fact that, because patrons could be sued for casino debts in New Jersey, patrons were paying off those debts before they paid their Nevada casino debts. With respect to the tax aspect, a federal court had decided enforceability of a gaming credit instrument was not necessary for IRS taxation of it.

A lot of people merit recognition for that historic law, the first draft of which was written by Tony Cabot and me. Senator Alan Glover of Carson City stepped forward to be its sponsor and chief witness. Gaming industry attorneys Shannon Bybee, David Russell, and Sam

McMullen were important in the evolution of it. Burton Cohen, the president of the Desert Inn and Country Club and chair of the powerful Nevada Resort Association, led the all-star gaming industry delegation, which included such figures as Terry Lanni, then the president of Caesars World; James O'Brien, Del Webb Corporation; Barrie Brunet and Bob Ostrovsky, MGM; Frank Scott, Union Plaza; Jerry Higgins, Gaming Industry Association of Northern Nevada; Harry Wald and Bruce Aguilera, Caesars Palace; Phil Hannifin, Summa Corporation; John Douglass, Comstock; Phil Griffin, Harolds Club; and Richard Bunker, Circus Circus.

One member of the gaming industry delegation, whose company also operated a casino in New Jersey, won agreement to amend the legislation to copy the New Jersey provision of mandatory deadlines for gaming credit instruments to be deposited in banks for collection. Unfortunately, the hopes for that provision to provide for more timely payment of gaming debts were not realized. That procedure took away from casino executives the flexibility to negotiate payment plans acceptable to the patron.

For example, it is common for a premium patron to pay "trip-to-trip." On one visit, such a patron will incur a gaming debt, sometimes in the hundreds of thousands of dollars or more, and promise to pay upon his next visit, which might occur several months later. If the mandatory

deposit date arrived before the patron's next arrival at the casino, the debt instrument had to be deposited. The disruption of established credit practice caused the gaming industry to make repeal of the mandatory deposit deadlines a first order of business for the 1985 legislative session.

At the first committee hearing on the 1985 amendment, there was no legislative objection when I explained the mandatory deposit deadlines served no business or regulatory purpose, had caused patron relation problems, and had inhibited the industry in competition for major international patrons. Industry legal counsel Claudia Cormier, David Russell and Sam McMullen were among those joining in that successful effort.

Burton Cohen was the lead gaming industry figure in achieving legislative recognition of gaming credit. He was used to such responsibility in a gaming industry career that spanned more than forty years. Burt played major roles in the creation of the Frontier Hotel Casino in 1966 and of Circus Circus in 1968. He also served as the chief executive officer of such historic resorts on the Las Vegas Strip as the Thunderbird, the Flamingo, the Dunes, and the Desert Inn. As the two-term president of the Nevada Resort Association, he was the lead spokesman for the Nevada gaming industry at federal as well as state levels on legislation, including Nevada's unique regulation to combat money laundering at casinos. He is one of the

few to be enshrined in the Gaming Hall of Fame and also honored with the Lifetime Achievement Award of the American Gaming Summit.

One of the CEOs supporting the gaming credit legislation, Richard Bunker, later became the architect of some of the most important amendments to the Nevada Gaming Control Act as president of the Nevada Resort Association. I was privileged to be on his legislative team together with two of the most legendary lobbyists in Nevada history, Jim Joyce and Harvey Whittemore of Lionel Sawyer and Collins.

❖ The enactment in 1985 of a statute that for the first time authorized foreign public companies to own and operate Nevada casinos. I won licensing for the first such company, Carma Limited of Canada, to open the Bourbon Street Hotel and Casino in Las Vegas. Since then, I have been privileged to represent such leading foreign gaming companies as London Clubs of the United Kingdom, Aruze Corporation of Japan, and Crown Limited of Australia.

❖ Winning an exemption for Nevada from the federal Bank Secrecy Act, which made it possible for Nevada casinos to have the oversight only of the Nevada gaming authorities in protecting against money laundering. The Bank Secrecy Act imposed currency transaction reports

on casinos in all other states. Nevada's control was imposed by Nevada Gaming Commission Regulation 6A, which proved to be much tougher than the federal law. The Nevada regulation prohibited activities that might be associated with money laundering, all of which were perfectly legal under federal law. As a result, Nevada gaming licensees were fined more than \$2 million for actions or omissions that were acceptable for casinos in the rest of the country pursuant to federal law. The U. S. General Accounting Office made a national study, as a result of which the only recommendation was that the federal law should incorporate the provisions of Regulation 6A.

Despite the success of Regulation 6A, the U.S. Treasury Department's Financial Crimes Enforcement Network (FINCEN) always sought to eradicate it. The Treasury Department sought to repeal it by Congressional action in the Anti-Money Laundering Act of 1993, on which I testified. U.S. Senator Richard Bryan managed to preserve Regulation 6A.

FINCEN eventually succeeded in forcing amendments to Regulation 6A that diminished its value to Nevada. As a result, Regulation 6A was repealed in 2007. Currency transaction and suspicious activity reporting by Nevada casinos today is under the total control of the federal government.

❖ Protecting the integrity of the gaming gross revenue license fee, which is by far Nevada's most important tax. First adopted in 1945, this tax has always required casinos to pay a percentage to the state treasury of their net cash win (winnings minus losses). For several years in its early history, the tax was the object of efforts by Gaming Control Board auditors to tax things in addition to net gaming win. These essentially occurred during a period when I was the lead gaming attorney for the Nevada Resort Association (NRA), the trade association for casinos.

As the tax assessments on one casino would have been precedent for similar assessments on all the other casinos, the NRA usually assigned me to defend against the assessments. There were a great number of them over the years. We never lost one, although many were settled at a cost easier to bear than that of legal proceedings.

One of my favorite memories is of the 1993 attempt by Control Board auditors to assess a gross revenue tax on uncollected baccarat commissions. As part of our effort to defeat it, Lee Skelley, a Las Vegas Hilton casino executive, and I set up a baccarat table in the hearings rooms of the judiciary committees and had the legislators play the role of VIP bettors. Following our demonstration, the legislature clarified the definition of taxable revenue to explain that uncollected baccarat commissions did not constitute cash collected by the casino.

Baccarat provides a good example of the often-complicated types of gaming taxation problems with which we dealt. The game is played with eight decks of cards, which are dealt from a box known as a “shoe.” No matter how many players are involved, only two hands are dealt. They are termed the “player hand” and the “bank hand.” Players may bet on either hand. They are wagering against the house, not each other. The hand whose cards come closest to totaling nine wins.

If the player hand wins, those who bet on it are paid off at even money. A win on the bank hand is processed in a different manner, as the odds of the game favor a greater percentage of wins by the bank hand. Therefore, there is a process to equalize the odds. If the bank hand wins, those who bet on it are paid off at even money, but the player must pay a “commission” to the casino. This commission is a certain percentage of the money won by the player, usually five percent at that time.

The traditional procedure was that commissions were not collected while wagering was being conducted, because that would have interfered with the orderly flow of this fast-paced game. During play, the commissions owed by a player were indicated by small buttons, termed “lammers,” which were placed on the player’s position at the table. The collections were made while the eight decks of cards were shuffled.

At the time, it was estimated that 99 percent of commissions were collected. However, there were occasions when the commission was forgiven, which was accomplished by removing the lammers from the table. Baccarat supervisors had the discretion to exercise their business judgment on this, after considering the amount of the player's losses and the prospect for his continued patronage. The decision always was based on what could be expected to ultimately result in the most money for the casino.

❖ Legislation in 1993 to ensure that no casino went out of business without guaranteeing payment to the state of a tax on gaming credit collected after the casino went out of business. This was an example of the industry supporting what was best for the state, even though it meant less money for casinos.

❖ Contributions to the work of the National Gambling Impact Study Commission, which was created in 1997 to prepare a comprehensive report on social and economic implications of gambling. I was a member of the task force that attended all of the Commission hearings around the country and coordinated much of the industry's involvement, and I testified at the Commission's hearing in Las Vegas. Frank Fahrenkopf, Jr., the president and

CEO of the American Gaming Association, directed the industry effort skillfully.

Despite intensive efforts by opponents of legal gambling, the commission report was balanced. I credit that in great respect to the contributions of three commission members who had the greatest knowledge of the gambling industry: Terry Lanni, who was then the chairman of the board and CEO of MGM MIRAGE; William Bible, the son of U.S. Senator Alan Bible, who was then the chair of the Gaming Control Board and later the president of the Nevada Resort Association; and labor leader John Wilhelm, hospitality industry president of UNITE HERE.

The American Gaming Summit honored Lanni with its Lifetime Achievement Award with the comment that he “has proved to be the ideal representative for the gaming and entertainment industry in the most vital forums and in the most demanding circumstances.”

❖ Legislation in 2002 to authorize high-limit gaming salons. Nevada had always suffered in competition with casinos elsewhere in the world, because it could not offer VIP patrons the opportunity to gamble in private. This was because Nevada gaming policy provided that access to gaming activities could not be restricted except by legislative action. The move to obtain that legislative action

was led by MGM MIRAGE, with Dan Wade, the vice chair of its board of directors, assisted by Bill Timmins, president and CEO of the Aladdin Resort and Casino on the Las Vegas Strip and an executive member of the board of directors of London Clubs of the U.K.

We explained to the legislators that some of the most valuable international patrons were accustomed to wagering tens of thousands of dollars a hand while being accorded the highest standards of hospitality, including security and privacy. Even though Nevada casinos could offer the best in facilities, they could not offer privacy.

The legislature saw the wisdom of granting casinos the discretion to use business judgment in those cases. That was seen as a major marketing benefit, but it turned out that regulatory provisions governing its application may have been too restrictive. Gaming Control Board Member Randy Sayre in 2008 took the lead in consulting with the industry to find ways to moderate the restrictions without damaging any regulatory aspect. Those ways were accepted by the Nevada Gaming Commission.

❖ The enactment in 2005 of the first statute to authorize “mobile gaming” throughout public areas of licensed gaming establishments (which do not include hotel guest rooms). Mobile gaming systems utilize hand-held devices that allow casino patrons to wager on games, gaming devices, and race, sports, and other events.

Mobile gaming was envisioned by Cantor Fitzgerald, a worldwide financial services company. It became part of the resurgence of the company after it was almost destroyed by the 9/11 terrorists attacks in New York City. Cantor Fitzgerald became an indelible part of the 9/11 history when all of the 658 employees on duty in its headquarters at One World Trade Center were killed.

Lee Amaitis, the president of Cantor Fitzgerald affiliate Cantor Gaming, led the mobile gaming project, assisted by the legal direction of Stephen Merkel and the day-to-day field work in Nevada by Managing Director Joe Asher. Phil Flaherty, a longtime gaming industry executive who had served as the top executive at the Desert Inn and the Union Plaza, became a key member of the team as a consultant.

The mobile gaming statute would not have been possible without the cooperation and guidance of Gaming Control Board Chairman Dennis Neilander and Member Mark Clayton. The blueprint for the bill was based on the research and analysis of Marc Warren, gaming control staff member. Chief Deputy Mike Wilson contributed insightful drafting to the Nevada Gaming Commission regulation that implemented the statute.

❖ Joining my partner Greg Gemignani in winning approval from the Nevada Gaming Commission in 2007 for the Hong Kong Jockey Club to be the first non-U. S.

race track to share in Nevada wagering revenue. The Hong Kong Jockey Club, led by CEO Winfried Engelbrecht-Bresges, is the largest taxpayer in Hong Kong and a model for charitable support.

❖ Serving as the gaming attorney for ITT Corporation, a \$22 billion conglomerate led by Rand Araskog, and ITT Sheraton Corporation, led by John Kapioltas, in their first entry into the gaming industry with the acquisition of the Desert Inn in 1993.

❖ Helping open the world outside the state to casino development by Nevada gaming licenses. At one time, the state's gaming control authorities would not allow a person who was involved in gaming in Nevada to become involved in gaming anywhere outside the state. That later was changed to allow them to go outside, but only with formal permission. Part of the approval process was to demonstrate that the gaming control system in the other jurisdiction was comparable to that of Nevada's.

We represented Caesars World as the first applicant approved to be involved in Atlantic City gaming. In 1979, the Nevada Gaming Commission found that the regulatory structure in New Jersey was good enough for a Nevada licensee to be involved there. Then we got Hilton Hotels Corporation approved as the first Nevada company

to operate casino gaming in another country. That was in Queensland, Australia.

❖ Authorization for the Nevada gaming industry to enter the Internet age. That was an effort we led on behalf of MGM MIRAGE, and our legislative director was Dan Wade, the company's vice chairman. It is an effort that, although successful on the legislative level, has been frustrated by the opposition of the U.S. Justice Department. This was in the creation of the first legislation in the country that will allow gambling on the Internet. The bill, passed in 2001, made it possible for the gaming commission to adopt regulations for issuing licenses for involvement in Internet gaming. If that regulation is adopted—and that's going to be a long process—it'll be the first time any state has approved and licensed that activity. It's a major development thus far, and while the commission still hasn't voted and hasn't made the necessary findings, it's certainly something that's captured the attention of the gaming industry and governments elsewhere.

It is difficult to grade the relative importance of the firsts in gaming law in which I was involved, but I did answer that question once in a public session. The question was posed to me by a member of the Detroit City Council

after our firm had been selected as one of two to serve as special gaming counsel in creation of that city's first gaming control system. Ellen Whittemore and John Bailey were the other members of our firm's team.

At our first meeting, a member of the city council went over my background and my involvement in the creation of legislation that is now in the Gaming Control Act, and she asked, "Of all the things that you've done, which do you consider the most important?"

That was a question I wasn't expecting. We've been involved in dozens of major changes. One of two that I picked was the creation of the resort hotel standards, which for the first time recognized that anyone obtaining a non-restricted license or a casino license in our most populous counties would have to contribute to the economy of the community in doing so. That act required that anyone desiring to have a nonrestricted license would have to be a resort hotel, would have to make contributions to the community in construction money and commit to providing the personnel and other things that make a casino a resort.

The other I selected was the creation of gaming enterprise districts in Clark County, which restricted the growth of casinos by making the quality of life a factor to be considered. It gave the public, for the first time, direct input into where casinos would be located away from the established casino center, such as the Strip.

Our guidance was provided in splendid fashion by Kathie Dones-Carson. Phyllis James at the time was chief counsel for the City of Detroit. Today she is enhancing the efforts of MGM MIRAGE as its Senior VP and Senior Counsel.

There have been many court decisions in which Lionel Sawyer & Collins attorneys have taken the lead in upholding the rights of Nevada casinos and upholding the Nevada regulatory system. For instance, Ken Uston v. Hilton Hotels

Ken Uston was a successful card counter, and he claimed the right to gamble in a casino regardless of the casino's desire to determine standards for its players and admissibility of players. But the court upheld the right of the casino to choose to whom it would deal, so long as they did not restrict anybody on any ground that was protected by the Constitution. So that upheld the discretion of the casinos to operate consistent with the Nevada law and not with someone else's interpretation of it.

How about the Hotel Riviera v. Griffith?

That was complicated, and it was brought on by a 1983 Nevada statute. When Nevada became a state, it

adopted English common law, except as it was changed by statute, and there had never been a statute governing gaming debts in the state. We had a high collection rate, usually in the high nineties, even without the ability to sue for payment. But the economy underwent a slight depression in the early 1980s, and gaming collections dipped. The legislature thought that gaming should be given the same protection as any other industry, so, in 1983, it made gaming debts enforceable.

The Hotel Riviera case was the first court test of this 1983 law, which, for the first time, made it possible for casinos to go to court in Nevada to enforce judgments on gaming debts. It was also the first test outside Nevada as to whether the courts of another state would follow the constitutional demand to give full faith and credit to a Nevada judgment.

In the Riviera case, the California Superior Court for the County of San Mateo rejected a public policy attack on the judgment of Nevada. The person against whom the judgment was served sought to argue that gaming was against the public policy of California, and therefore the court should reject a judgment based on the acceptance of gaming in another state.

The court said the public policy of the state was immaterial—the U. S. Constitution requires the courts of one state to give full faith and credit to the judgments of the courts of another. That set the standard, which has

since been followed throughout the country. It was a very important decision.

In 1985, the case of *Jose Hernandez v. Circus-Circus Casino* addressed another aspect of gaming debts. A gaming debt can be owed by a casino, or it can be owed by a patron, and that case upheld Nevada's system for dealing with patron claims against a casino. There is a statutory system established whereby any claim against the casino for alleged winnings is given full investigation and adjudication by the gaming control authorities without any cost to the patron.

A number of cases involve interpretation of the tax statutes. Nevada has a very simple tax and a gross revenue license fee, which is simply winnings minus losses; in other words, the net income you have from games and slot machines. Over the decades, there have been a number of administrative efforts by the state Gaming Control Board to expand that tax, some of which have ended up in court. Usually, if there was any claimed ambiguity in a statute, the legislature clarified it so that the law maintained its integrity—that the tax always has been simply on gross revenue. There have been a number of court decisions that have been directed toward maintaining the constancy of that statute.

With respect to litigation, the firm won two important cases before the Nevada Supreme Court on behalf of

International Game Technology (IGT), with which we have had a long and valued association. My partner Dan Reaser won *Sengel v. IGT* in 2000, and my partner Paul Larsen won *Miles v. IGT* in 2007.

In the Sengel case, the patron was playing a slot machine when a malfunction suspended the game, stopping the reels. The reels stopped with three jackpot symbols appearing unevenly across the pay line. The internal error was cleared, which caused the game to reset and show a non-winning series of symbols. The patron claimed a jackpot win of \$1,797,000. The casino refused to pay because of the malfunction and the misalignment of the symbols.

The Nevada Gaming Control Board rejected the patron's claim because (1) the game had been suspended because of an internal malfunction and (2) the final alignment of the symbols was a nonwinning alignment. So, the patron appealed to the Supreme Court with public policy arguments. The Supreme Court upheld the Control Board decision, holding that the legislature empowered the Control Board, not the court, to dictate policy concerning disputed gaming debts, that the Control Board decision was not unsupported by any evidence and that a decision by the Control Board will not be disturbed on appeal unless it is arbitrary, capricious, or contrary to law.

The 2007 Supreme Court decision won by Paul Larsen resolved a disagreement as to whether the outcome

of a slot machine wager is determined only by the position of the symbols displayed by the device. In *Miles v. IGT*, the patron had played a progressive slot machine, on which he aligned three jackpot symbols that barely touched the pay line. He claimed a \$2.5 million jackpot. However, because the random number generator (RNG) had not generated a jackpot, the machine did not recognize the symbol alignment as a jackpot. An attorney for the patron claimed the position of the reels overrode the actual outcome of the machine.

After IGT won in an administrative proceeding before the Control Board and in a judicial appeal before a state district court, the question moved to the Supreme Court. The Supreme Court ruled, in an unpublished opinion, that, as applicable regulations required the wagering outcome to be determined exclusively by the RNG, the determination of wagering win or loss can be made only by that method. It does not matter if the alignment of the reels could be interpreted otherwise.

On several occasions gaming regulators have attempted to provide provisions for the taxation of certain gaming credit instruments. Would you tell us a little bit more about that?

Well, that's a fascinating history. It covers a number of years. Although Nevada taxes slot machines and games

individually, the basic tax is a share of the gross revenue that the casino earns. That is winnings minus losses. It's a statute that was adopted in 1945 as the first state tax. It has remained basically unchanged as a graduated tax, but the top levels of it have increased over the years. It now ranges from 3.5 percent up to 6.75 percent on a calendar month, and it has always been a cash tax.

Unlike the federal tax system, where the taxpayer is always looking for ways to change interpretation of the tax to his favor, the gaming industry has held to a strict interpretation of the law, and the Gaming Control Board's audit division has sought ways to expand the tax of things other than cash. The principal area has been on gaming credit instruments, which reflect credit granted for gaming purposes. They have sought various ways to tax casinos on those instruments under one theory or another, forcing the casino industry to pay tax on money it did not receive. In every case, that has not stood up before the legislature.

Is there any way of knowing what percentage of gaming revenue comes from credit play?

The percentage has fluctuated over the years. At the outset, table play was the dominant force. Before women became prominent gamblers, slot machines were something for wives to play while their husbands played craps or other table games. That's changed.

At certain points in history, credit gaming was responsible for greater than 50 percent of the gross revenue, so it has always been a major factor. When you talk about key players, who have the ability to wager and lose millions of dollars, that is frequently done on a credit basis, where the money is collected afterward. So it has been a major factor throughout, and taxation of it has been a matter of concern to the gaming industry.

The gross revenue statute is basically unchanged since 1945. There are a number of exemptions written into it, but they were present under a simple reading of the law. They're the exceptions you find in that statute saying, "These things are not cash received as winnings." They don't have to be in there. They are legislative responses to attempts by the gaming control auditors to tax things outside the scope of the tax statute.

In 1985 a citizen of another country became the first to be licensed to own and operate a Nevada casino. Would you tell us about that individual and some of the problems it created for the State of Nevada?

That was Genji Yasuda, who bought the Hotel Aladdin out of bankruptcy and became the first non-U.S. citizen to be processed for a gaming license. It was a long process during which the gaming control authorities learned a lot about the problems they would thereafter have to face.

With Japan, they were dealing with a country almost totally dissimilar to American jurisdictions: the language was different; the customs were different; policies were different; the relations between individuals were different; confidentiality and secrecy were different.

In the United States, gaming authorities are able to get confidential records, because they are operating with the consent of the individual. But not in Japan. They had to deal with a system that protected the privacy of its citizens much more than the United States does. They had to deal with records in a foreign language and done in a different manner than those here, so translators were involved throughout. I think, in the process, the gaming control agents learned a tolerance for different ways that people do things and a greater appreciation that people may do some things in a different manner, but in the same standards that the gaming control authorities demand for their licensees. It was a long, long process, but it did set the standard for the others that came after Mr. Yasuda.

The major Japanese figure of all time in the Nevada gaming industry became Kazuo Okada, the founder and chairman of Aruze Corp., a Japanese public company. Mr. Okada, continually named by *Forbes Magazine* as one of the world's richest persons, won recognition in a 2008 cover feature by *Global Gaming Business* for innovations in the pachinko-pachislot industry and in creation of slot machines. Jennifer Roberts and I represented Mr. Okada

and Aruze in licensing as a manufacturer and as major shareholders in Wynn Resorts, of which Mr. Okada is vice-chairman.

How was the legalization of corporate gaming received?

When corporations were first given the ability to be licensed in 1967 and 1969, there was a lot of opposition to it. Before that time, only individuals were licensed, and there was concern about corporate licensing on at least two grounds: one, personal accountability; and the other, the fact that there could be stock manipulation. So allowing corporations into Nevada gaming was not unanimously a popular choice. In fact, the chairman of the gaming commission at that time resigned in protest, as I recall.

The state's first approach to legalizing corporate gaming was that any equity holder in a corporation had to be licensed. That was fine if it was a private corporation, but with public corporations, you had not only thousands of stockholders, but they were constantly shifting as the stock was sold on the open market, and the traditional Nevada procedures simply did not work. So over the course of years, it was developed that any stockholder of a public corporation could be made subject to licensing, but that the only ones who were required to be licensed were those who held greater than 10 percent. At 5 percent,

when the owners of stock in a corporation were required to file notices with the SEC, they were required to file those same reports with the Nevada gaming authorities. Unless the person individually or in an association with others owned greater than 10 percent, he was not required to be licensed.

Nevada does not have any definitive standards on who has to be licensed in a public corporation, other than a shareholder who has greater than 10 percent. However, there are guidelines that the gaming authorities regularly apply. Those who hold the executive offices of president, principal accounting officer, secretary, and chief operating officer usually have to be on the board, or its equivalent; so that's usually whom the authorities are going to require to be licensed. But they have the flexibility to license whomever they want and to excuse anyone they want. That's pretty much the standard now for a public corporation.

For a private corporation, which could be a subsidiary of a public corporation, everybody has to be licensed. The company that owns the stock has to be found suitable. Every officer and every director has to be individually licensed for a private company.

For at least two decades there was somewhat of a conflict between the audit division of the Gaming Control Board and non-restricted licensees over the proper

administration of internal controls within their properties. You were personally involved in those conflicts, perhaps more than any other gaming law practitioner. Let's talk about internal control systems. In what year did the internal control system first become a factor in gaming control?

Internal control first appeared as a factor in gaming control in 1968. It came about with the adoption of Regulation 6.095, that required licensees to devise a system of internal control that would assure the production of standard financial statements.

A companion regulation adopted in 1968 was Regulation 6.043. It merely established procedures for the documentation of credit play, but, in years subsequent to its adoption, the audit division of the state Gaming Control Board came up with some ideas about how it might help them tax uncollected gaming credit—unpaid markers.

There is a long history to this. At the beginning, the statute on gross revenue defined it strictly as winnings minus losses; or, in other words, the net gaming win. As long as you're operating on cash, that doesn't create a problem. But gaming on credit gradually became a very instrumental force in the success of the gaming industry and in the success of the state treasury.

By 1960, the auditors for the state Gaming Control Board came to the realization that the audit division had no way to keep track of gaming credit instruments, so they developed a tax-reporting form whereon the licensee would record quarterly the total of cash and credit winnings. In other words, to arrive at net cash winnings, the licensee added credit issued and deducted unpaid gaming credit instruments.

So far as the industry was concerned that was merely a reporting tool that allowed the audit division to keep track of the number of gaming debts that were outstanding and to use that as a base figure for deducting collections from that original figure. It had nothing whatsoever to do with taxation, because taxation was based on a percentage of the actual cash winnings.

At one time uncollected gaming credit was the most burning issue in gaming control. In the 1970s, the auditors came up with what they called “theories” of taxing uncollected gaming credits. Eventually they had enough theories that the chief of the audit division put them into what he called an “audit manual.” That audit manual instructed the agents as to what tests they could make in order to actually assess the gross revenue license fee on uncollected gaming credit.

Without any justification whatsoever, the audit manual essentially made our cash system into an accrual system similar to the one followed by the Internal Revenue

Service. In computing your federal income tax liabilities, you start with gross income, which is everything you get from any source. Then you go through a procedure where you take certain deductions or exemptions. That results in taxable income, and that's what you pay the tax on. If the IRS challenges a disallowance, the taxpayer has the burden of citing specific authority for the deduction.

On the state gaming tax, the process is just the opposite: gross revenue is net cash winnings, collections from markers, and compensation from games such as poker, in which the licensee is not a party to a wager. The fatal defect in the position taken by the state auditors is that the Nevada law does not allow any deduction from gross revenue. They attempted to tax certain uncollected markers by saying, "We disallow them, and you can't subtract that from your winnings, so therefore you owe tax on them." When the agents were required to come up with legal authority, they did not have any!

The audit division said that the manual it had developed from its theories was secret, that we (as representatives of gaming interests) could not see it, and the only time we would know about it was when an assessment was made. We first came to grips with it in 1978. At that time there were about two dozen tax assessments pending based on the audit manual, which no property had ever seen. The Gaming Control Board had not seen it and had not approved it; the Nevada

Gaming Commission had not seen it or approved it; and the Nevada legislature had not seen it or approved it.

You've been assessed a tax on a check, which was not deposited, and there's no statute or regulation requiring that the check be deposited. How can you be assessed a tax on it? And the reason we didn't deposit it was we learned that the account was closed.

We asked, "What possible authority do you have?"

They said, "It says so in our audit manual."

As attorney for the licensees, I said, "Can we see the manual?"

They replied, "No, it's confidential."

I said, "Well, if it's confidential, how do licensees know what to follow?"

They said, "You will know what the manual says when we assess you for having violated it." [laughter]

Had the head of the audit division approved it just within his division?

The audit division chief had approved it. He was given credit for creating it, for writing it, but it was a compilation of different theories that various agents or supervisory agents had put together. He was a fine audit chief, and they were just trying to do what they thought was right. I think some agents thought their job was to collect taxes, but it wasn't; it was to make sure that the law was obeyed.

They misinterpreted the law in this case, but overall they did a fine job. They added much to the success of gaming control.

Lionel Sawyer & Collins went to court on behalf of a number of the gaming properties, against whom some two dozen tax assessments were pending. The attorney general's office immediately ruled that the procedure followed by the audit manual was wrong and that all the pending tax assessments were invalid.

Now, that would be pretty good as far as it goes. But then the attorney general's office came up with a totally new theory, which was, in our view, equally without basis: that the gross revenue license fee applied to cash and chips won and to chips before they had been paid for, when they were obtained on a credit basis. That interpretation could have put the industry on an accrual tax basis of accounting for gaming taxes, and it could have cost the industry an immediate federal income tax liability of tens of millions of dollars. That was a scary prospect.

We asked the court for a declaration of the scope of the gross revenue license fee. That case became so confusing—with the Gaming Control Board having one interpretation of the statute, the attorney general's office having another interpretation, and we offering our long-held interpretation—that the court issued a decision which rejected *every* argument that had been made to it and upheld a regulation that was not even in dispute.

Importantly, the decision confirmed that only net cash won was taxable. But it didn't matter, because the legislature, by the time the court decision became final, had resolved the problem. In 1981, at the joint request of the board and the industry, it adopted 463.371 of the Nevada Revised Statutes.

Our first victory on the matter was that the bill, as the court had done, recognized that the industry was on a cash basis. Then, for the future, it applied the tax to certain categories of uncollected markers. If a licensee had done something that made the marker uncollectible, such as failing to get the gaming credit instrument signed by the patron before accepting it, it would suffer a monetary cost for that.

So, for the first time, matters other than cash were added to gross revenue. It did not change the interpretation of gross revenue; rather, it added an aspect to it that resulted in a tax on certain categories of uncollected markers.

Was credit play becoming more important?

That's right. Credit play came to account for more than half of the revenue from major casinos in the state. People who use credit are usually doing so because they come to the casino not expecting to lose. They're not bringing huge sums of money, and they're not wiring in

huge sums of money, but they *do* have the ability to lose it. So you have people who might come into town and lose millions of dollars during their stay, all of it on credit.

In 1981 the board made its first attempt to discipline a licensee for violations of internal control . . .

That was the Desert Inn. Lionel Sawyer & Collins represented them. I was the lead attorney in the matter, so I have a fairly good recollection of that. It took four years from the time the complaint was filed till the time it was actually resolved by a negotiated settlement between the board and the commission and the Desert Inn.

The charge against the Desert Inn was that in processing certain patrons, they had not followed their own internal control system. The Desert Inn's position was that it *had* followed its internal control system; that the Gaming Control Board was misconstruing what the internal control system required. I do not recall whether the Desert Inn's internal control system had been approved by the board, mainly because it was not an issue in the case.

Regulation 6.050, which was adopted in 1974, commanded nonrestricted licensees to submit written internal control systems to the Gaming Control Board by October 31, 1975. Five years past that date, some still

hadn't been reviewed by the board, but all had by the beginning of the Desert Inn case.

It's hard for people to believe now, but by the end of 1975 there had been some one hundred and thirty internal control systems submitted by the licensees, and they all differed in format, content, and quality. In one submission, the entire internal control system was on two handwritten pages! Others submitted comprehensive systems of more than one hundred pages.

The one uniform thing was that the audit division did not soon respond to the licensees. The audit division simply found it impossible to complete even an *initial* review of the internal control systems. They were simply overwhelmed and didn't have the agent power.

It was a system imposed without the means for the audit division to fully comply with it. As a result, some licensees did not receive a response from the division until five years after the system was filed. And in at least one of those cases, the response was, "We reject your system because it is totally inadequate." Of course, by then, the licensee had been operating under it for five years!

How was the Desert Inn case eventually settled?

There was a compromise. After the case had been dormant for the better part of two years, the commission found that the Desert Inn had violated its internal control

system, and it fined the Desert Inn. I immediately appealed to the court, and the court sent it back to the Nevada Gaming Commission for consideration of further evidence. By that time, the passion over the case had subsided.

In 1985, upon review, the attorney general's office and Nevada Gaming Commission found that justice would be served by voiding the conviction of the Desert Inn. A settlement was worked out allowing the Desert Inn to pay some money in the form of a tax payment rather than a disciplinary fine, and the finding was that the Desert Inn's overall record in internal control had been satisfactory.

What this case did for the future was establish the principle that a licensee can be disciplined for failure to adhere to a gaming control system. The settlement also included language to the effect that the board and the gaming industry should work together to reform the internal control process, "so that there is a more uniform adherence in the industry to regulatory standards which provide for strict control and the practical realities of business decision making."

Regulation 6, in its current form, has existed since October 1987. Although all of the accounting regulations were ultimately revised, the impetus for revision was the difficulty that had been experienced by both the board and the industry with the original internal control process.

It has now been developed so that the licensee has a lot more flexibility. There are minimum standards that everyone has to meet, but each licensee has the ability to bring its internal control system to the level that it thinks its operation requires.

Before that, there were no standards. Originally, you had to develop an internal control procedure, and the Gaming Control Board Audit division was required to look at it and say whether it was adequate or inadequate. The adoption of Regulation 6.090 and 6.100 required all licensees to meet minimum standards. Once having met those, you could add anything you wanted that you thought might make your system better. The important thing is, there is a high minimum standard for every casino licensee, but the minimum standards are different for the two classes of licensees: a Group One licensee has certain standards, and a Group Two licensee has lesser standards, and the groups are divided by the amount of gross revenue that they take in.

Regulation 6A was the only Nevada gaming regulation directly tied to a development on the federal level. Federal law requires financial institutions to file a currency transaction report whenever they accept more than \$10,000 in cash from a client. In the mid-1980s the United States Treasury Department determined that a casino was a financial institution. That brought all casinos under the Bank Secrecy Act and currency reporting requirements

that had been imposed on banks and other financial institutions.

There was a provision for state (rather than federal) regulation of the currency transaction if the state imposes a substantially comparable system. To its great credit, Nevada adopted such a regulation (6A) and demonstrated that it was willing and able to enforce it on the state level. Regulation 6A was approved by the Treasury Department, and between 1985 and 2007, Nevada enforced its own currency transaction reporting system. It was also the only state except New Jersey to have a “suspicious activity” reporting component in its regulation.

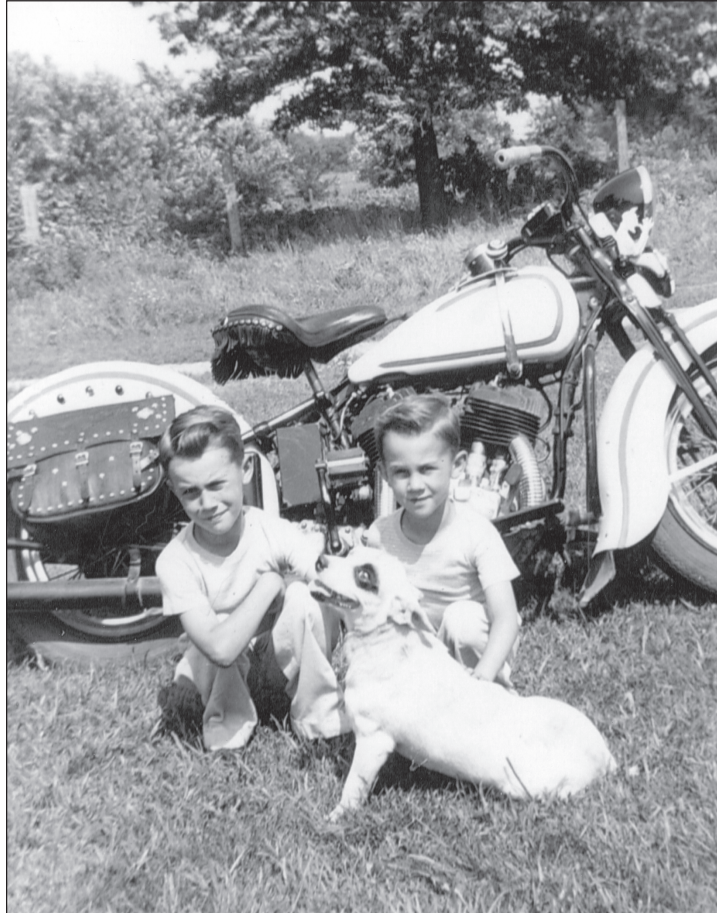
The federal law does not actually prohibit any transaction; it merely requires the reporting of it. Nevada had the only law that absolutely prohibited certain transactions. Regulation 6A addressed prohibited transactions, reportable transactions, and suspicious transactions.

Nevada’s Regulation 6A included the strictest governance of cash transactions in the country. But the core of 6A was also the core of the federal regulation: Whenever a casino accepts or pays out greater than \$10,000, there has to be a form filled out and given to the Internal Revenue Service. This form contains information about the transaction and information about the patron involved in it, and the patron has to satisfactorily identify himself or herself. And there are supplements to the form.

Once the \$10,000 level has been reached, then anything in addition to that could trigger the requirement for a supplemental form, so that the government does know the amount of cash that has passed through the system from that patron.

The Bank Secrecy Act is the fundamental law from which all of these things are derived. For a period of time, I was the gaming industry representative on the Bank Secrecy Act advisory group, which is a group of about forty government and private-industry representatives that advises the Treasury Department, the Secretary of the Treasury, and the Financial Crimes Enforcement Network. The group includes the IRS, the FBI, the Secret Service, and other enforcement agencies; and, on the industry side, representatives of banks and other financial institutions.

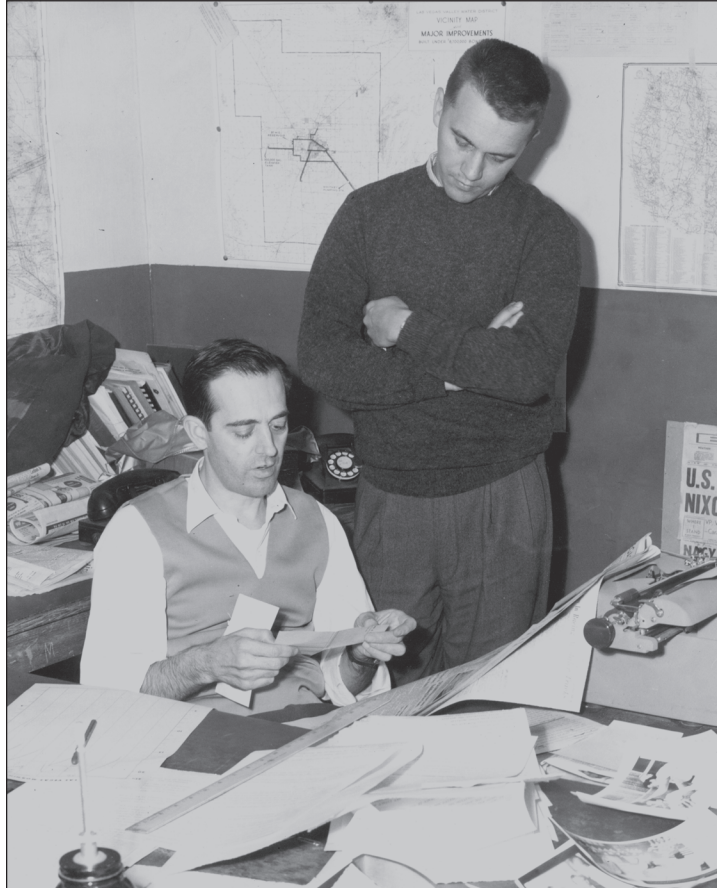
Most recently, the casino industry position on the Bank Secrecy Act Advisory Group has been ably filled by Gary Jacobs, executive vice president and general counsel of MGM MIRAGE, and Tom Peterman, senior vice president and general counsel of MGM Grand in Las Vegas. Tom is an alumnus of the gaming law practice group at Lionel Sawyer & Collins, and, in term of service, he is the dean of general counsel in the Nevada gaming industry.



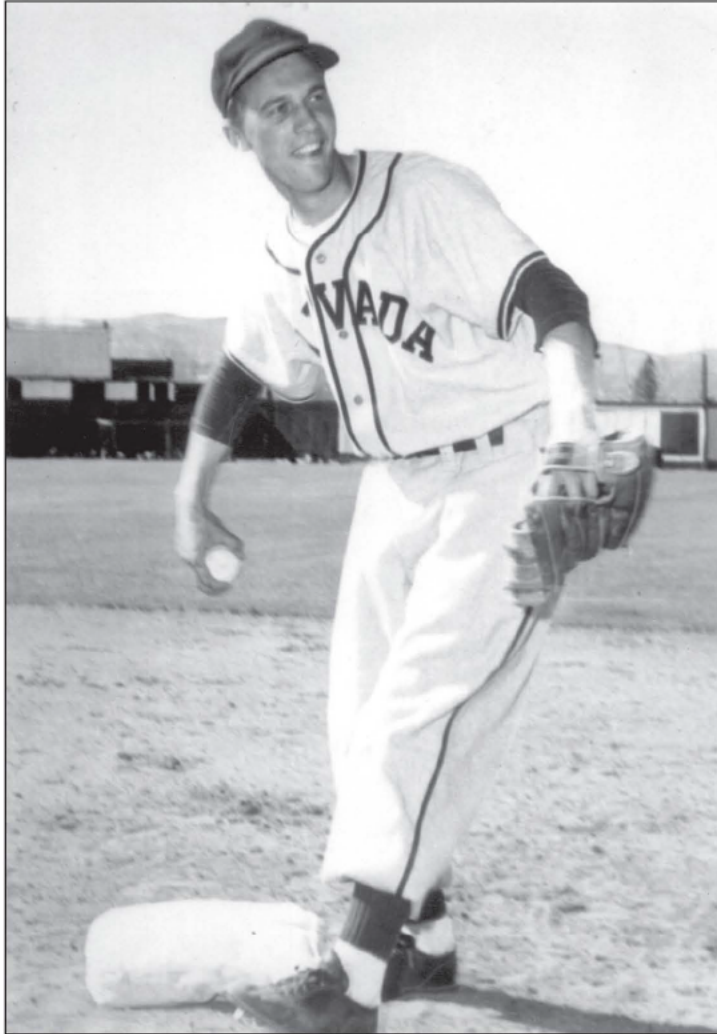
Bob Faiss, left, and brother Don pose with the family dog, ca. 1940.



Bob (lower right) and brother Don with their parents, Will and Theresa Faiss, ca. 1942.



Bob, at the age of twenty-four, became the youngest city editor in the history of the *Las Vegas SUN*. He is shown here in 1958 in the *SUN*'s newsroom with Managing Editor Adam Yacenda, seated, who was godfather to Bob's first child, Michael.





Above: Bob at work as executive assistant to Gov. Grant Sawyer, ca. 1966.

Facing page: Bob played for the University of Nevada Wolf Pack baseball team in his freshman year, 1954-55. He was a seldom-used reserve infielder. The star player on the team was Roger Trounday in center field. Trounday became the chair of the Nevada Gaming Control Board and later a top executive in the northern Nevada gaming industry. They worked together on a number of gaming law matters later in their careers.



White House staff assistant Bob Faiss with President Lyndon B. Johnson at a bill-signing ceremony in the West Wing in 1968.



NJ

January 28, 1969

Dear Bob:

Thank you for your warm and generous letter. I am grateful to you for your outstanding service on my staff, and I wish you every success in the years ahead.

Kindest regards.

Sincerely,

A handwritten signature in dark ink, appearing to be "Lyndon B. Johnson", with a long horizontal stroke extending to the right.

Mr. Robert D. Faiss
4570 MacArthur Boulevard, NW
Apartment T-3
Washington, D. C. 20007

Facing page: No reference to Bob Faiss and his career in gaming law would be complete without including his wife, Linda, whom he credits for much of what he has achieved. Linda is president of Faiss Foley Warren, a public affairs and government affairs agency in Las Vegas. She was involved in the gaming industry as a member of the board of directors of Aztar Corporation, a public company that owned and operated casinos in Nevada and other states. (Photo by Darryl Martin.)



Facing page: Bob served as attorney for the Del Webb Corporation, one of the first giants in the Nevada gaming industry, for more than twenty years. The company honored his service in 1994 by naming a street in Webb's Sun City development in Las Vegas "Faiss Drive." Bob is shown holding a Faiss Drive sign in company with LeRoy Hanneman Jr., Webb Senior Vice President.



The millions of visitors to Nevada who play slot machines can be confident those devices will operate properly, thanks to the exhaustive testing by the Technology Division of the Nevada Gaming Control Board. Travis Foley, the Technology Chief of the Control Board, is shown reviewing a new slot machine model before its approval is considered at a licensing hearing of the Control Board.





Bob (r.) and Bobby Siller (l.), a veteran FBI executive who served two terms as one of the three members who direct the Nevada Gaming Control Board, are shown at an awards ceremony in 2000 at which the two were recognized as among the “Most Influential” in the Las Vegas community by the business newspaper *In Business Las Vegas*. At center is entertainment figure Ed McMahon, the master of ceremonies. Mrs. Tina Siller is second from right, and Mrs. Linda Faiss is second from left.



Shown in an appearance in 2008 before the Nevada Gaming Control Board is Mr. Kazuo Okada, left, with his attorney, Bob Faiss. Mr. Okada is the founder and chief executive of Aruze Corp. of Japan, a manufacturing licensee that is among the notable foreign gaming companies that have led the globalization of the Nevada gaming industry. (He is also the Vice Chairman of Wynn Resorts, a major international casino company.) Aruze Corp. is considered to have one of the most effective gaming compliance programs in the industry. (Photo by Darryl Martin)



The three members of the Nevada Gaming Control Board are shown during a licensing hearing in 2008 for Mr. Kazuo Okada, founder and chief executive of Aruze Corp. of Japan. Shown are, from right, Member Randall Sayre, Chairman Dennis Neilander, and Member Mark Clayton. At left is Marilyn Epling, who recently retired after a long and successful career as Executive Secretary of the Control Board and the Nevada Gaming Commission. Ms. Epling has been succeeded by Brian Duffrin. (Photo by Darryl Martin)



Randall Sayre, appointed in 2007 as one of the three Members who guide the Nevada Gaming Control Board, makes a point to Bob during a recess of a gaming license hearing. Before his appointment, Sayre was the long-time chief of the Control Board's Investigations Division.



Shown in conference prior to the start of a recent Nevada State Gaming Control Board licensing hearing are Member Mark Lipparelli, right, and Patrick Wynn, Deputy Chief of Investigators. Lipparelli, a former Control Board staff member and a top executive at gaming industry companies, was appointed to his position in 2009. Wynn, who directs gaming license and other investigations in the agency's Las Vegas office, is a veteran of some 30 years with the Control Board. (Photo by Darryl Martin.)



Bob Faiss is shown in a 2009 appearance before the Nevada State Gaming Control Board. The Control Board officials are, from left, Executive Secretary Brian Duffrin, Member Mark Lipparelli, Chairman Dennis Neilander, and Member Randall Sayre. (Photo by Darryl Martin.)

Facing page: When Bob Faiss started representing gaming industry clients in 1973, there was no such thing as a gaming lawyer. Bob eventually became, according to *Las Vegas Review-Journal* columnist Jane Ann Morrison, “the world’s first full-time private gaming attorney.” Due to the example and work of Bob and leading gaming law practitioners around the world, two international associations of gaming law have been created and a number of state bar associations have formed gaming law sections.

A recent example of recognition of gaming law as a distinct area of legal practice was the first mountain states edition of *Super Lawyer* magazine, which determines the top 5 percent of attorneys in various fields of practice. The magazine not only selected the top gaming attorneys in the area composed of Nevada, Utah, Montana, Idaho and Wyoming, but also featured Bob in its cover story.

MOUNTAIN STATES Super Lawyers®

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2007

THE TOP ATTORNEYS IN NEVADA, UTAH, MONTANA, IDAHO AND WYOMING

The Advocate
Alan Sullivan stands up
for the Mormon Church

**Bridge Over
Troubled Water**
Jeffrey Fereday and
Lawrence Wolfe fight for
the lifeblood of the West

Hands off My Mountain
Mae Nan Ellingson leads
Montana into the future

King of the Strip

How Bob Faiss
became the No. 1
gaming attorney
in Vegas

LAW & POLITICS
and the publishers of
LAS VEGAS LIFE



Bob Faiss (l.) and Ellen Whitemore consult in Melbourne, Australia, in 2007 with Michael Neilson, the general counsel and company secretary of Crown Limited, about the company's plans to be licensed for involvement in the Nevada gaming industry. Crown Limited, an Australian public company headed by James Packer, invested some \$2 billion to acquire interests in Nevada casino companies. Ellen, Bob, and other attorneys of Lionel Sawyer & Collins are Nevada counsel for Crown Limited.



Bob and his wife, Linda, are shown with Rory Reid, center, Bob's partner at the law firm of Lionel Sawyer & Collins and chair of the Clark County Commission. The photo was taken at a 2007 birthday party for Reid. Reid is the eldest son of Senate Majority Leader Harry Reid.

Bob and the Reid family have a long association. Harry Reid chose Bob to introduce him at his 1984 announcement that he would seek reelection as a Nevada congressman. Bob next served on the executive committee that was formed to guide Harry Reid's first campaign for U. S. Senator in 1986.



Pictured in 2007 are five generations of the family of Theresa and Will Faiss. (Relationships noted are to Theresa and Will.) In the front row, from left, are grandson Branden Faiss, holding twin great-great grandsons Blake and Brent; great-granddaughter Stephanie Faiss Haskins, holding great-great granddaughter Malia Jane; great-grandson K. Robert Faiss; and great-great grandson Hunter Faiss. In the back row, from left, are grandsons Mitch and Mike Faiss; Will Faiss; and son Bob Faiss. The occasion was Will's ninety-sixth birthday celebration in Carson City.

In 1955 the state legislature created the Gaming Control Board within the Nevada Tax Commission. The board's three members are appointed by the governor to four-year terms. What qualifications must the board's chairman have?

The chairman of the Gaming Control Board must have five years of what the statutes call "responsible administrative experience in public or business administration," or else he or she must "possess broad management skills." One member of the board must be an accountant qualified to practice public accounting under the provisions of Nevada law and "have five years of progressively responsible experience in general accounting, and have a comprehensive knowledge of the principles and practices of corporate finance;" or that person must be "an expert in the fields of corporate finance and auditing, general finance, gaming, or economics." Another member of the board must have "training and

experience in the fields of investigation, law enforcement, law, or gaming.”

How many divisions did the board have in its early years?

The act that created the Gaming Control Board had no reference to divisions whatsoever. The only reference to agents was “investigative,” so, from reading the bill, you would think it was merely an investigative agency. But the board agents also had the responsibility of enforcement. So, while there is no reference to actual divisions of the structure, the agents were divided into audit, enforcement, and investigative responsibilities.

The first Gaming Control Board had a rather informal structure. The board today has a very distinct structure: it has seven divisions. These are Administration, Audit, Corporate Securities, Technology, Enforcement, Investigations, and Tax and License.

The Administration Division serves as the administrative arm of the board and generally is involved in personnel management and training and budgetary services. The Audit Division conducts periodic audits of casinos to assure that they have made proper accounting of taxes and fees. They also review compliance with procedures mandated by law and by the casino’s own system of internal controls.

Corporate Securities investigates and processes applications filed by publicly-traded corporations. They not only do the investigation for the approval of the company and its subsidiaries initially, but they also thereafter regularly monitor the financial condition, changes in ownership, and regulatory compliance of those publicly traded corporations. Another responsibility given to them by Nevada law is monitoring of activities in gaming by Nevada licensees outside the state.

The Technology Division inspects and tests electronic gaming devices, such as slot machines and video poker machines, before they can be approved for use in casinos. They also test new games that are being introduced into the casino market.

The Enforcement Division is the police force for gaming control. They're actually on the scene in the casinos to make sure that the casino is obeying the law and is not the subject of unlawful attempts from outside.

The Tax and License Division collects and records the gaming taxes and fees paid by Nevada casinos. It publishes general information about the industry, about developments in it, and especially about the taxes paid by it. Investigations conducts the investigations of any individual or privately-held business that files an application with the board.

There's no time limit to investigations. The investigation will not be completed until the agents

conducting it, and their supervisors, are thoroughly satisfied that any question concerning the applicant's suitability is answered. Some investigations have taken more than a year; some, which involve a reinvestigation of an applicant, might be done, if the conditions require it, within four months.

The Gaming Control Board has total flexibility. Their only guideline is to do the job thoroughly and do it right. So a major investigation—by that I mean a publicly-traded company, perhaps one that is headquartered outside the United States, with a number of individuals who have to be licensed—may require a team of a number of agents, while other applications may well have only one agent and a supervisor assigned to them.

Once an investigation is started, can the applicant withdraw his application?

The law provides that the applicant may at any time prior to final action request withdrawal, but withdrawal is not allowed unless the board is satisfied that it should be withdrawn. The board has the discretion—despite the wishes of the applicant—to complete action on the matter and rule on it, making a recommendation to the commission.

If they do allow withdrawal, they can do it upon any condition they deem appropriate, including making it with prejudice, which gives it the same status as a denial in some respects, including the length of time that must pass before a person can reapply.

When the investigation is complete, insofar as the agents of the investigative team are concerned, they have what is called a “closing conference.” The applicant and his attorney are called in, and the results of the investigation are told to the applicant. He is put on notice as to whether the agents have found things that raise concerns about suitability. From that point, it goes to a formal regularly-scheduled monthly meeting of the board, where there will be a full public hearing. The board will recommend either approval or denial of the application to the commission. It also may refer the application back to staff for further investigation.

Usually, two weeks later the commission will meet and consider the same application and decide what action to take. The commission has full discretion to do whatever in its wisdom it thinks best, no matter what the recommendation has been from the board, but the board recommendation carries a great deal of weight. It is unusual for the commission to take an action contrary to one recommended by the board. If the board has

recommended denial, the commission can approve only by unanimous vote.

Does the applicant have to appear at the board meetings and the commission meetings?

The board and the commission have the discretion to waive an appearance. Usually the applicant is required to appear at the board meeting, but the commission in recent times has developed what it calls a “consent calendar.” Before the adoption of the consent calendar, every applicant appeared and every application was processed; but now, if you are fortunate enough to be on the consent calendar (which means no commissioners raised any questions about your suitability), then you are not required to appear before the commission, and the matters on the consent calendar are taken in one motion. At all times, though, the chairman of each body has the discretion to waive appearance for good cause shown.

What are some of the difficulties an applicant’s counsel will face at a board hearing?

The aspect about which there has been the most complaint is that, unlike some other jurisdictions, the investigative division report is confidential. You may have

to go into a hearing not knowing exactly what allegations have been made against the applicant. I have not complained, because I find the agents realize the difficulty one has in dealing with a confidential report and make sure that you're told orally the general problems you may face going into a hearing.

So a gaming attorney is not like a criminal-defense attorney?

No. It is different in a lot of respects. In a criminal case, if you haven't been apprised of what charges your client is facing and the evidence that's going to be utilized, you can use that as a basis for having the matter dismissed. It has been said that one of the purposes of a successful criminal attorney is to keep out any incriminating evidence.

In our job as gaming attorneys, it's different: our job is to assist the applicant in bringing out all pertinent evidence. If there is evidence that casts the applicant in a poor light, a gaming attorney will try to demonstrate why it should not be a disqualifying factor. The job is to get the information out and then show why it should not be held against the applicant.

A denied applicant for a Nevada gaming license has no judicial recourse to seek reinstatement or issuance of

the gaming license. That has been upheld consistently by the Nevada Supreme Court, and, most recently (though it's been quite a number of years ago), in the case brought by Frank Rosenthal in connection with his denial of a gaming license.

The principle had been tested before in various respects, but Rosenthal's is the most celebrated case, partially because he was such a notorious figure in the gaming industry. It resulted in the Nevada Supreme Court holding that an applicant was not entitled to the protection of the United States Constitution, because gaming is a matter reserved to the states within the meaning of the Tenth Amendment to the Constitution.

If anybody wanted to test the principle again, they'd be going up against a body of precedent. It's pretty well established that a person does not have a constitutional right to be involved in gaming and therefore has nothing to protect until he is licensed. At that time, he gets a property interest and the United State Constitution kicks in. However, constitutional experts have begun to question whether the barrier to judicial review today may have eroded.

A property interest in gaming is subject to the same constitutional protections as any other property. It cannot be taken from you without due process of law. Unlike the application process, in a disciplinary action to take a license

away from you, you do have full constitutional protections, because you have a protectible property right.

Has the structure of the gaming commission, as it was created by Governor Sawyer, changed very much?

It has. The Nevada Gaming Commission once had a broader range of responsibilities than it has now. It had the tax and license functions, which is now under the state Gaming Control Board. However, the Gaming Commission remains the ultimate voice in licensing and disciplinary matters. It is the final authority as to what the law will be in the form of regulations, and it enjoys the widest possible discretion in performing its duties. (The courts give great deference to the gaming authorities, saying that gaming is specialized, and you have to give deference to the people who are trained in it and who deal with it regularly.)

The board also has certain responsibilities where it is the final voice, one prominent one being in disputes between a patron and a casino over alleged winnings. For example, when a customer believes that he has won a jackpot, and the casino says he did not, the final administrative voice on that matter is the Gaming Control Board. The patron cannot go to the commission. Whichever entity is affected by the final decision of the

board in an adverse way, the casino or the patron, has recourse only of going to court, not to the commission.

In most other respects, the commission is the final authority. It has to decide who is going to be a licensee in the first place. It gives the final decision as to which slot machine and which game is suitable to be put on a casino floor. It makes the final adjudication as to how much tax is imposed on a licensee. It sets the standards for behavior within the industry in all respects. Of course, in adoption of those standards in the form of regulations, the Gaming Control Board and the attorney general's office play prominent roles.

Given its many and great responsibilities, the commission never has enough staff. Right now it has the largest staff it's had since the tax and license and audit division functions were taken from them a number of years ago. The commissioners have, counting the clerical staff, four employees. That's it! (The board, on the other hand, has more than 450 employees.) The commissioners have to share attorneys with the board, and they have to rely on the board for their research information.

I'm concerned that the commission is understaffed and underfunded. Gaming industry proceeds are the principal source of revenue for the state, and anything that affects that source, and the livelihood of the tens of thousands of people whom it employs, is a concern. It's almost unthinkable that the governmental entity that is

the last voice in how the industry's going to be governed has such little support in the form of staff and funding.

That flaw has been masked by the talent and commitment of the commission chairmen and the members of the commission who've used their personal resources to compensate for what the system did not provide for them. In 1995 the legislature increased the salary of the chairman and other members, but they haven't received any raises since.

Commissioners originally were paid only \$25 per meeting day and actual expenses. The problem was not only in lack of salary, but also lost income. Some of them were retired before joining the commission, but many were at the peak of their earning power and put aside their revenue-earning activities in order to serve the state for virtually nothing.

Inadequate pay is just one of the problems. Until the legislature in 2001 authorized two employees for research and administration, the staff of the commission consisted of a part-time administrative assistant and a part-time clerical employee. It needs more research and investigative capability and an independent budget for travel or education. Perhaps most troublesome, the same division of the attorney general's office represents both the board and commission.

In my opinion, when the commission must decide whether the board or a gaming licensee has the correct

legal position in a dispute before it, the legal counsel situation contains an inherent conflict of interest. For example, if one deputy attorney general representing the Gaming Control Board in a taxation dispute before the Gaming Commission issues an interpretation of the tax statute favoring the control board, it is going to be difficult for the deputy attorney general representing the Gaming Commission to advise that her office has wrongly interpreted the law. This situation can and should be corrected. This observation in no way denigrates the consistent excellence of the legal work performed by Chief Deputy Attorney General Mike Wilson and his gaming law deputies.

As for financial resources, the board has adequate budget for, and it has always has been willing to provide, educational and travel funds for the commission from the board appropriation. However, the commission usually feels it is inappropriate to request money from the board chairman, because the board often appears as a party before the commission in contested cases with members of the gaming industry.

As a result of this insufficiency of resources, chairmen of the commission have paid out of their own pockets for clerical and administrative assistants, for business-related travel, and for education about new developments in business and financing affecting the gaming industry and

their own responsibilities. Often, they have done their own legal research on questions of law before them.

Much needs to be done to correct the situation. The commission must have a staff with sufficient experience, and with sufficient talents, to deal with every problem that it faces, and the resources available to the commission should allow it to be fully independent in all respects. The governor should establish a separate, adequate budget for the commission, and the legislature should make a separate appropriation to the commission, which would be controlled by the commission chairman.

On the subject of legal representation, the commission should have separate legal counsel who are accountable only to it. This could be accomplished by the legislature making the attorney general legal counsel for the commission only, because the commission is the final authority on most gaming control decisions, and usually the commission decision is the one that's going to be challenged in court, if there is a challenge. The Gaming Control Board could then be allowed to hire its own staff attorneys, who could also act as agents.

I would also like to see some of the authority formerly held by the position of Executive Secretary restored. Beginning with Dr. Walter C. Wilson in 1959 through the incumbent in 2009, Brian Duffrin, the position has been held by talented individuals. Those serving in the interim

between Wilson and Duffrin included Charles Munson, Edward Bowers, Irene Morros and Marilyn Epling.

I think if we could do those things, the system would be improved. Because of the quality of the people who have been appointed to those positions, they've made the system work, even though they did not have adequate resources to rely on.

Are people competing to become members of the gaming commission?

There's more competition for a position on the control board. The control board is a fully paid, full-time job. Holding it puts you in a position to make a difference in government, and it allows you to build for the future and be involved in a field for which there is a high demand. If board members choose to go into the industry after they complete their control board service, they are very much sought after, and they've enhanced their career. It's a job for younger people.

The commission is supposed to represent a cross-section of society. You want people who are not dependent upon their salary from the commission, who have no reason to pay attention to anything but the merits of the position. They want to serve their time and then go back to what they were doing. Some, thankfully, have found positions in the industry where they have been able to

continue doing the same type of work after their commission service, although they're getting better paid for it.

Commissioners, in large part, are people who have already fully accomplished their goals in life, and they're not seeking to go on to anything from their commission position. There have been some exceptions, however. One would be Harry Reid, who was right in the middle of an extraordinary career when he served as commission chairman. He later served as U.S. Congressman and U.S. Senator from Nevada and Majority Leader of the U.S. Senate. Another is Brian Sandoval, a young man who left the chair of the commission to become attorney general and later a U. S. district judge.

What is the working relationship between the Nevada Resort Association and the two Nevada gaming regulatory agencies, the commission and the board?

The Nevada Resort Association (NRA) was created in 1961, essentially as a trade organization for the southern Nevada casino industry. Since that time it has served as a seasoned, reasoned, and respected voice for the Nevada gaming industry. Although its membership originally was limited to southern Nevada casinos, it became a statewide organization after a similar northern Nevada casino organization dissolved. The current president of the NRA

is a man who was an extraordinary public servant over many years, and that's former chairman of the Gaming Control Board, Bill Bible.

I had a long, very much appreciated association with the NRA. I was privileged to serve as its lead gaming attorney for a quarter century, from about 1974 to 1999, which provided some of the most rewarding and treasured experiences of my career. That period spanned the terms of four NRA chief executive officers: Bill Campbell, Vince Helm, John Schreiber, and Richard Bunker, and nineteen chairmen of the NRA board of directors.

The NRA has been so responsible in its representation of the gaming industry that a good working relationship has developed with the Control Board and the Gaming Commission. In my experience, when something had to be done, the approach of the NRA was to look at it not only from the view of what was good for the gaming industry, but what was good for the state.

From the time the NRA was created, I believe the members of the Control Board and the Gaming Commission realized that it could be trusted and had valuable resources. While the board and commission are entirely independent in making their judgments, they have welcomed input from the NRA whenever anything had to be done in the way of legislation or adoption of regulations, because they usually found that the advice they got was sound and in the public interest.

You've been around the gaming industry for many years. What do you think were some of the most influential events in Nevada gaming history?

Well, everybody would agree that legalization of gaming in 1931 would be number one. We wouldn't be where we are without someone having the courage to do that. Humboldt County assemblyman Phil Tobin presented the bill, and it wasn't even his—he gets the credit because the assemblyman who requested it was afraid to introduce it.

It was just a one-page bill. All it did was require a license to operate a gaming enterprise. Fortunately, eight days later the legislators realized they had forgotten to explain how licenses were to be issued and who was to issue them, so there was a companion bill giving authority to each county sheriff. And that was a comprehensive bill covering all of five pages!

From 1931 until 1945, gaming control was local. It was under the authority of the seventeen county sheriffs, so you had seventeen different methods of licensing and gaming control. But in 1945, the legislature enacted the first gross-revenue license fee, which was 1 percent, and they transferred licensing and taxation authority to the Nevada Tax Commission. The importance of that legislative action was that for the first time we had state controls, so we had a unified system of licensing and, as it

turned out, regulating gaming in the state. However, the tax commission had no regulatory authority and *felt* it had no discretion in issuing gaming licenses, even though it did.

The other important element in that bill was the license fee. The first benefit of the license fee, obviously, is the tremendous financial benefit it has brought to the state. It's the single most important revenue source, and has been for decades. The second is that the gross revenue license fee structure that was enacted in 1945 has remained intact, essentially in the same form, although the fee has been raised to a maximum of 6.75 percent.

The stability of our tax structure, which is almost unique anywhere in the country, has been a strong attraction for people who want to invest their money in the gaming industry. They know that the state is not going to do anything without careful study, and they can rely on any decisions for change in gaming control to be reasoned and careful.

(Following up on the 1945 licensing bill, the legislature passed an act in 1949 that completed the shift of gaming regulation from the county sheriffs to the state tax commission. They left some oversight, other than licensing, with the county sheriffs. The next important event regarding regulation came in 1947.)

Despite the change in the law in 1945 giving the Nevada Tax Commission licensing responsibility, they felt

they really had no regulatory authority and had to rubber stamp applications for gaming licenses and grant them just as they would a simple business license. But in 1947, following the death of Benjamin “Bugsy” Siegel, Attorney General Alan Bible issued an opinion that marked a decided change in the procedure for granting gaming licenses. That opinion advised that the tax commission had the right to consider an applicant’s background; and, if it found “reasonable ground to apprehend that the grant of a license would be against the public interest,” the commission had the power to deny the application.

The Tax Commission exercised its new authority right away by denying five applications, but it had little in the way of resources to do very much. Its staff consisted of one inspector and one accountant.

In the early 1950s Nevada gaming faced its most serious threat—the hearings of the Senate Special Committee to Investigate Organized Crime, which was headed by Senator Estes Kefauver of Tennessee. The Kefauver Committee had a special interest in Nevada gaming and was very critical of it.

In 1951, in the wake of the Kefauver hearings, the House of Representatives introduced a bill to impose a 10 percent tax on the gross receipts of all gaming transactions. That would have effectively killed casino gaming in Nevada. Were it not for the power and prestige

of Senator Pat McCarran of Nevada, the bill would have passed, and many of us in Nevada would not be here today.

Senator McCarran convinced Congress to pass a modified bill that exempted casino games—those being card games, roulette, slot machines, and dice—but did include racebooks. As a consequence, twenty-one of the state’s twenty-five racebooks went out of business. They simply couldn’t make it financially. What industry can accept a 10 percent tax on its gross? Certainly the racebook industry couldn’t, and the casino industry would not have survived without Senator McCarran’s intervention.

That brings us to 1955, when another significant move was the creation of the State Gaming Control Board as the enforcement arm of the Nevada Tax Commission, which retained overall responsibility. The bill also boosted licensing based on merit and stronger enforcement.

Four years later began the era of Governor Grant Sawyer, who held office from 1959 through 1966. He implemented our modern system of gaming control, which has been copied by so many jurisdictions in one way or another. He took the governor out of the licensing process and created the Nevada Gaming Commission as an independent body, joining the State Gaming Control Board as part of a two-tier regulatory system.

Then he charged his appointees to “hang tough” in getting any underworld figures out of the industry if they were there, and keeping them out if they were not. The

List of Excluded Persons, commonly called the “black book,” was born during his first administration.

Governor Sawyer later, through intercession made possible by his good friend, President John Kennedy, was able to block another severe threat to the gaming industry. That was a planned invasion of casinos by federal agents under the direction of Attorney General Robert Kennedy.

Next in my chronology of the most important events in the history of Nevada gaming were the state’s corporate gaming acts of 1967 and 1969. The first act in 1967 was a bold move, but it had no practical impact. The law required that each corporate stockholder agree not to trade his or her stock without prior approval from Nevada; so, even though they were authorized, public companies stayed away.

Two years later, in 1969, the legislature corrected this defect, and the movement of public companies into Nevada began. That changed forever the face of the industry. Corporate revenues now make up about 95 percent of all gaming revenue going to the state. We simply wouldn’t be the leader in gaming internationally were it not for the contributions of the public companies.

The next landmark event is the 1977 Nevada Supreme Court decision in the case of *The State v. Rosenthal*. It affirmed the constitutionality of the Nevada regulatory scheme, which declares that all gaming licenses are privileges; that suitability for licensure is within the

exclusive jurisdiction of the Nevada Gaming Commission; and that applicants denied gaming licenses or other approvals based on statutory and regulatory criteria have no judicial recourse.

Finally, two of my favorite legislative acts regarding gaming: The first is Assemblyman Matt Callister's Gaming Enterprise District Act in 1989, which introduced for the first time the concept of protecting neighborhood quality of life from gaming expansion. This act was then strengthened considerably in 1997 by Senator Mark James, chairman of the senate judiciary committee, by amendments that he designed and pushed through the legislature. While it's limited to southern Nevada, it has kept the growth of neighborhood casinos to a minimum and allowed citizens to voice whether or not they want to have casinos in their neighborhood.

The other bill would be the Resort Hotel Standards Act of 1991. That declared for the first time that a nonrestricted gaming license should be utilized as a tool for economic development. Thereafter, it would be denied to any applicant except a resort hotel in Washoe or Clark County. The bill made it certain that not only would there be a great initial contribution in construction funds, but also (through the hotel requirement) that that licensee would do its part to bring additional customers into the Nevada gaming market and not just siphon off the efforts of others.

That concludes my personal list of the ten most important events in the history of casino gaming in Nevada. There are a few others that could have made the list, however:

The Interactive Gaming Act of 2001 was the first Nevada legislative action to create a framework for gaming on the Internet. Although it has been slow in developing, there is agreement on the huge potential of the interactive gaming market. It may be that the standards the legislature set, that must be met before interactive gaming is permitted, means we will never realize that potential. But certainly, it was a breakthrough act. Nevada was the first jurisdiction in the United States to set forth a framework for legal gambling on the Internet.

In 1979 and 1980 the courts upheld the power of the Nevada Gaming Commission to enter an emergency order suspending gaming licenses and thereafter revoking licenses for unsuitability of owners and/or executives. Another important ruling came in 1983, when the Nevada Supreme Court, in *Spilotro v. State*, held that the Nevada *List of Excluded Persons* is constitutional. As a result of that, the Nevada Gaming Commission undertook a decade-long expansion of the *List of Excluded Persons*.

The mobile gaming era initiated by Cantor Gaming has the potential to be influential in shaping the industry of tomorrow.

What do you see for the future of gaming in the United States and in the state of Nevada?

The globalization of gaming, I believe, is going to be the strongest force in the growth of gaming in Nevada. I think that will happen in two ways:

The first is that the Nevada gaming companies, such as MGM MIRAGE, Las Vegas Sands, Wynn Resorts, and Harrah's Entertainment, which have created casinos in foreign jurisdictions will—because of the financial success of those casinos—be better able to make new investments in Nevada. The second is that foreign companies will continue to seek a place in the Nevada gaming industry, as indicated by the arrival of Aruze Corp. of Japan, Dubai World of the Emirate of Dubai, Crown Ltd. of Australia, and Kerzner International Holdings of the Bahamas.

Nevada gaming control has been a presence in all of the foreign casinos operated by companies licensed in this state. This is because Nevada's 'foreign gaming' statutes provide Nevada's control board and commission with authority over the gaming operations anywhere of a Nevada gaming licensee.

Illustrative of this wide-ranging authority was the 2007 case in which the Gaming Commission found a joint venture in Macau by MGM MIRAGE and Pansy Ho to be suitable to create the \$1.25 billion MGM Grand Macau. Ms. Ho is the daughter of Stanley Ho, who

formerly had the monopoly on casinos in Macau. That is the only such matter pursuant to the foreign gaming statutes ever to be considered by the Gaming Commission. Ellen Whittemore, Dan Reaser, and I were the attorneys for MGM MIRAGE in that matter, with Gary Jacobs, MGM MIRAGE general counsel. John O'Reilly, a former chairman of the Gaming Commission, represented Ms. Ho.

Nevada has a justifiable interest in the gaming activities of its licensees. I trust that Nevada regulators—in enforcing the foreign gaming statutes—always will be reasonable, realistic, and conscious of the rights of foreign jurisdictions to establish gaming standards that satisfy their national laws, customs, and goals, even though they may differ from Nevada's.

Also, I think the Nevada gaming control system must continue to exercise flexibility and understanding in analyzing the foreign companies who apply for gaming licenses. Just because a foreign transaction is different from the U.S. standard should not make it suspect.

One foreign company that today is ranked as one of the best in Nevada gaming is Aruze Corp., a Lionel Sawyer & Collins client that is a leading manufacturer of gaming devices and pachislot and pachinko machines. It was founded by Kazuo Okada, an engineer who is noted for innovation in slot machines and entertainment machines. He is rated by *Forbes* as one of the world's wealthiest

persons and serves as the vice chairman of Wynn Resorts, of which a subsidiary of Aruze is the largest stockholder. *Global Gaming Business* magazine featured Mr. Okada on its cover as one of the “25 People to Watch” in 2008 for major impact on the gaming industry.

Since its initial license was granted by the gaming commission in 2004, Aruze has had a commendable relationship with the Nevada gaming authorities in all respects. It has one of the most respected compliance programs in the industry, headed by compliance officer Yoshiyuki Shoji.

Since 2004, Aruze and its executives have been licensed by the gaming commission with no delay or difficulty; however, it took years of investigation by the control board to make the 2004 licensing possible. There were many reasons for the lengthy investigation, but at least some were rooted in language difficulties and differences in accepted business conduct between Japan and Nevada. Most of the issues occurred before Aruze made the transition from a private to a public company.

For example, the gaming agents took a while to learn that the Japanese answer of “Hai” to a question means “Yes” but it can also mean “I understand your question.” The agents also came to understand that there is nothing wrong in the view of the Japanese with a contract being performed by parties in a different fashion than provided in the language of the contract. That is because Japanese

business executives are primarily concerned with the fairness of an agreement—if unexpected developments cause the contract to become unfair or unprofitable to one of the parties, they may simply adjust things to achieve fairness.

The Nevada gaming control system justifiably is generally accepted as a model for fairness, effectiveness and flexibility. It allows regulators the discretion to acknowledge manners of business or personal conduct that are acceptable in a company's home country without compromising Nevada's essential regulatory goals. If they continue to do so, that will help maintain Nevada's attraction to foreign gaming investors and investors.

The future of the gaming industry seems secure throughout the United States. It is so well regulated, and governed by people of such great personal integrity, that it will be able to stand up to any scrutiny of standards and practices. People will see that they have a gaming industry on which they can rely in every respect.

Further growth of the industry, of course, is going to depend on economics. Gaming is not invited into a jurisdiction just because they want their citizens to be able to gamble; it's usually because the jurisdiction has suffered some economic depression, and they're looking for sources of taxation that are not present. Other jurisdictions have proved that gaming works, so I think you will eventually have further expansion of the industry.

And, I expect, because of its quality, gaming will continue to have a secure place in the American commercial system.

Of course, gaming is an industry that, beyond any other, requires public respect and belief that it's being operated honestly. It can always be brought down by illegal acts. All gaming control systems have to be secure and in place, and the corporate compliance systems have to be the same, because anything untoward that happens in gaming anywhere can tarnish its reputation everywhere.

Relative to that, does the “compulsive gambling” phenomenon pose a problem for the industry?

It's a problem that the gaming industry has joined with government to try to control. Not a day goes by, in my experience, that people in the gaming industry are not aware of the problem and the necessity to guard against it.

In general, addiction is a problem in human society, and gaming addiction is no different from any other addiction. The person has to have the capacity to become addicted, or else it presents no threat to him. All addictions are dangerous, all of them deserve our attention, and addiction to gaming, even though it affects a very small percentage of society, deserves our constant attention and care. Carol O'Hare, Executive Director of the Nevada

Council on Problem Gambling, has become a celebrated leader in that effort.

You have had a lengthy career. Looking back, what are some accomplishments that you are most proud of?

My gaming law career, counting my service as a staff assistant to the first Nevada Gaming Commission in 1961-1963, has spanned almost forty years. I have a number of treasured memories. Most of them don't involve primarily accomplishments in gaming law, but individuals who helped make them possible. Each contributed to what Nevada has accomplished in the evolution of gaming law, gaming control, and the gaming industry, and they each deserve recognition for it:

I take some gratification from having served as gaming law counsel for companies that were, for particular periods of time, the largest or most important gaming companies in Nevada. That began with the Del Webb Corporation in the mid-1970s and lasted through the years of Howard Hughes's Summa Corporation, those of Caesars Palace, the casino subsidiaries of Hilton Hotels Corporation, and into the era of MGM MIRAGE. Those companies successively were the largest or most important gaming industry leaders—one after the other, they were powerful and beneficial forces in the development of the

industry and Nevada. I was privileged to be along for the ride.

Del E. Webb and his executives made contributions to Nevada gaming history in many important ways. The Del Webb Corporation was headquartered in Arizona, and its construction projects contributed to Allied victory in World War II. Its first venture with respect to Nevada gaming was construction of Bugsy Siegel's Flamingo Hotel on the Las Vegas Strip in 1946.

In 1952, as an individual, Mr. Webb bought an ownership percentage in the 150-room Las Vegas Sahara, which was constructed by his company on the site of a casino named The Bingo Club. In those days, only individuals—not corporations—could be licensed for casino ownership or operation.

When I first represented the Del Webb Corporation, it had become the owner of the Sahara, the Mint in downtown Las Vegas, the Thunderbird on the Las Vegas Strip, the Sahara Reno, the Sahara Tahoe, the Primadonna Club in Reno, and the Nevada Club in Laughlin. By the end of 1990, all of those casinos had been sold.

Among the Webb executives with whom I worked most closely on gaming matters were Phil Dion, Tony Atchley, Bill Dougal, Ernie East, Bob Johnson, James O'Brien, Richard Waters, Gerald Heetland, Don Stephenson, and Sam Boyd (who later, with his son, Bill, founded the Boyd Gaming Corporation).

After its reign as a Nevada gaming pioneer had ended, the Webb Corporation excelled as a home builder and creator of retirement communities. Under the direction of LeRoy Hanneman and his team, the Sun City communities in southern Nevada became models of excellence. In 1994, one of the major thoroughfares there was named Faiss Drive by Webb.

Webb was the leader of the Nevada gaming industry at a time when the gaming control process was still finding its way. Its Sahara Tahoe Hotel and Casino was involved in a celebrated disciplinary case. Grant Sawyer, Dennis Kennedy, and I won that case in the Supreme Court, and the decision established a protocol for gaming control audits.

The Del Webb Corporation also was selected as his point of re-entry into Nevada gaming by Frank Sinatra, years after his gaming license had been revoked by the Nevada Gaming Commission for catering to gangland figure Sam Giancana. I had been Executive Assistant to Governor Sawyer during Nevada's contest with Sinatra over the Giancana incident in 1963. In 1976-78, Sinatra and I were once again on opposite sides. I represented Webb in the gaming law aspects of a defense against a takeover of the company by Sinatra and his attorney, Milton Rudin. Rudin won a seat on the Board of Directors in 1977, but that was as far as the attempt ever succeeded.

Hilton Hotels Corporation, under the leadership of Barron Hilton, was a dominant force in the Nevada gaming industry for a number of years. It owned and operated such properties as the Las Vegas Hilton, the Flamingo Hilton, the Flamingo Hilton-Reno, the Reno Hilton, and the Flamingo Hilton-Laughlin. At one point, it was reported that Hilton's Nevada properties accounted for some 40 percent of the revenue of all Hilton hotels.

John Giovenco, the head of the Hilton Nevada operations, led the gaming industry in a number of major initiatives. Greg Dillon was the head of international development for the company. Other major executives, with achievements too numerous to detail, included Jimmy Newman, Dennis Gomes, Kevin DeSanctis, Art Manteris, Lee Skelley, Charles Barry, Bob Kocienski, John Fitzgerald, Henri Lewin, Gary Gregg, Horst Dziura, Pat Cruzen, Bill Sherlock, Michael Georgilas, and Ray Koon, a former chief of investigation for the Gaming Control Board.

Reno attorney Raymond C. (Skip) Avansino became the leader of Hilton and later a member of the Nevada Gaming Commission. My bosses at the public company level were Tim Applegate and Bill Lebo, who served as general counsel, and Frank Shattuck and Claudia Cormier, general counsel at the Nevada level. Among other distinctions, Hilton was the first company to be approved by the Nevada gaming control agencies to

conduct gaming in a foreign jurisdiction, Queensland, Australia.

The Summa Corporation made an indelible mark on the history of both Nevada and its gaming industry. Summa, which in Latin means “highest,” was owned by Howard Hughes. The Nevada casino properties it acquired included the Sands, Frontier, Landmark, Castaways, Desert Inn, and Silver Slipper in southern Nevada and Harolds Club in Reno.

When Phil Hannifin retired as Chairman of the Nevada Gaming Control Board to take an executive position with Summa, one of the first things he did was engage me as the company’s gaming attorney. During Summa’s glory years in gaming, others with whom I had the privilege of working closely included John Goolsby, Jim Cox, Burton Cohen, John Alderfer, Phil Flaherty, Phil Arce, Pat Cruzen, Bill Friedman, Forrest Woodward, Pat Thorne and Kevin Malley.

Under Hannifin’s leadership, Summa led the way in a number of gaming industry initiatives. Eventually, Summa sold all of its gaming initiatives and concentrated on real estate developments. One of its biggest was Summerlin, a massive master-planned community that is predicted to become home for 160,000 residents and is one of the most acclaimed developments in the country. I was the lead attorney for the first local government approvals obtained for Summerlin.

One of the remnants of the Howard Hughes era in Nevada gaming is Nevada Gaming Commission Regulation 3.070. Adopted because of concern about Hughes's moves to expand his casino holdings, it comes into play whenever a company that owns a casino wants to acquire or open another casino. Regulation 3.070 requires the gaming control agencies to consider whether the additional casino will restrict competition in the industry.

MGM MIRAGE, under the leadership of Kirk Kerkorian, Terry Lanni, and James Murren, has forged a remarkable record, and it appears greater things are ahead. The MGM MIRAGE family today includes Bellagio, MGM Grand, Mandalay Bay, The Mirage, Treasure Island, Monte Carlo, New York-New York, Luxor, Excalibur, and Circus Circus. Gary Jacobs, the executive vice president and general counsel, gave legal shape to the acquisitions of Mirage Resorts and Mandalay Resort Group that made MGM MIRAGE the largest casino company in Nevada history. Ellen Whittemore and I were members of that legal team.

Kirk Kerkorian and his executive teams have made giant contributions to the development of the state and its gaming industry. One achievement they pioneered was the gaming industry's shift from primary reliance on gaming revenue to diversification that gives major roles to revenue from guest rooms, food and drink,

entertainment, shops, and attractions. Another is diversification of its work and executive force, for which it has won a number of national awards as a leader. Another is its great support of programs to better life and the future for Nevadans. Its CityCenter Project, which is announced to cost some \$8 billion, will be a vertical city set on some sixty-seven acres along the Las Vegas Strip. It can be expected to change the Las Vegas Strip as nothing before it has done.

Terry Lanni, former chairman and CEO of MGM MIRAGE, personifies the best features of gaming industry executives. He is one of the few who has stepped beyond speaking about things that matter to his company, to things that should matter to all citizens of the state. Jim Murren, who succeeded Lanni as MGM MIRAGE chairman and CEO, is another leading example of public commitment. He and his wife, Heather, comprised the force that created the Nevada Cancer Institute, which is well on its way to becoming a national leader in research, treatment, and education.

Alex Yemenidjian was a key factor in the MGM MIRAGE development. Others with whom I worked most closely over the course of more than a quarter-century were Dan Wade, John Redmond, Bill Champion, Bobby Baldwin, Bruce Aguilera, Bryan Wright, Richard Sturm, Jim Aljian, Tony Mandekic, Jim Dumond, Dan D'Arrigo, Bob Moon, Alan Feldman, Punam Mather, Mark Russell,

Larry Woolf, Tom Reich, John McManus, Bill McBeath, Cathy Santoro, Corey Sanders, Scott Langsner, Lloyd Nathan, Rose McKinney-James, and Ken Rosevear.

I must make special mention of MGM Grand general counsel Tom Peterman, an alumnus of Lionel Sawyer & Collins and the dean of general counsel for Las Vegas Strip properties. We shared a number of triumphs in gaming law over the course of most of my years in gaming law practice.

Caesars World, although it owned only Caesars Palace in Las Vegas and Caesars Tahoe at Lake Tahoe, was always in the forefront of change and success, following policies set by Henry Gluck and Terry Lanni. Their Caesars Palace, under the leadership of chief executives Harry Wald and Dan Reichartz, was a groundbreaker in the areas of championship sporting events, premier entertainment, and marketing to high-limit patrons. Its Palace Court Casino was the model for today's gaming salons that cater to patrons capable of losing huge sums of money. It even had the audacity to stage first the Las Vegas Grand Prix in 1981-1982, with Formula One cars, and then, under the direction of General Counsel Bruce Aguilera, the Caesars Palace Grand Prix with Indycars in 1983-1984 . . . *on a course laid out in the resort's parking lot!*

Dan Reichartz, together with John Giovenco of the Hilton properties and Mike Sloan of Circus Circus, was instrumental in a breakthrough in the area of horse racing.

They led the successful effort to create the Nevada Pari-Mutuel Association, winning approval for Nevada race books to join an interstate pari-mutuel system. Dan Reichartz became the Association's first president. This system allowed Nevada race books to have wagers made with them become part of a track's pari-mutuel pool. This meant that our race books were guaranteed income from every bet, without the risk that earlier was present when patrons were betting against the race book rather than each other.

One of my gaming law cases involving Caesars Palace was an attempt by a father to claim a \$1,000,000 slot machine jackpot won by his nineteen-year-old son, even though minors cannot legally gamble. It lasted through a series of decisions favorable to Caesars Palace at the administrative, state court, and federal court levels before the U.S. Supreme Court brought things to an end by refusing to consider it. The co-counsel on that case with me was Marc Rubinstein, who later became general counsel at Caesars Palace.

In 1989, Tony Cabot and I were counsel for Caesars Palace when it was the first to be approved by the Nevada Gaming Commission to operate a casino aboard a cruise ship. Among other innovations by Caesars Palace for which I was counsel was winning a court decision that allowed telecasts of horse races to be shown in race books and later helping achieve legislative confirmation of that ability.

Caesars Palace also was a major figure in successful defenses against attempts by Control Board auditors to expand the scope of the gaming gross revenue and casino entertainment tax.

Henri Lewin hired me as the first gaming law attorney for the Las Vegas Sands after it was acquired by Sheldon Adelson. That company expanded into the Venetian and Palazzo resorts and the Sands Expo and Convention Center in Las Vegas and casino resorts in Macau and Singapore, among others. Although other members of Lionel Sawyer & Collins now principally perform the legal work for that organization, there were some novel matters at the beginning in which I was involved for David Friedman, the head of legal affairs. One of the executives in the gaming industry for whom I have the highest regard is Robert Goldstein, the president of the Venetian, who is living proof that lawyers can become accomplished business executives.

Aztar Corporation owned the Tropicana Las Vegas, which, in the early days, appeared isolated in the middle of a desert at the southern end of the Las Vegas Strip. The casino was the first to feature gambling games in the swimming pool. Under the direction of Paul Rubeli, Bob Haddock, and Ned Armstrong, the public company and the Tropicana were both steady and innovative and gave adherence to high ethical standards a top priority.

International Game Technology (IGT), from a humble beginning in Nevada, became an international gaming icon with the most widespread and successful gaming operation. My partner Dan Reaser is its lead gaming attorney in Nevada. Its commercial success has been matched by its extensive contributions to education and charity. It is the sponsor of the annual Shannon Bybee Scholarship Award for the best gaming law research papers written by law students.

IGT President Tom Baker was an executive with whom I shared a number of industry initiatives. Another was Bob McMonigle, a force in market development. Former Lionel Sawyer & Collins attorneys Ray Pike and Brian McKay were chief legal counsel. Today, IGT is ably led by T. J. Matthews, with support from such as Dave Johnson, executive vice president and general counsel and former chief counsel for the Nevada gaming control agencies; Robert Bittman, director and executive vice president for product strategy; and compliance leader Michelle Chatigny, formerly with the Gaming Control Board. IGT has a talented legal team in the persons of Ken Creighton, Neil Friedman, and others.

The Palms, under the leadership of George Maloof, has won international recognition for influencing the style of Las Vegas. George is the face of new leadership in the gaming industry. In creating landmarks in resort content

and winning amendments to the Nevada Gaming Control Act, George has had the able assistance of industry veterans Jim Hughes, his general manager, and Tom Land, his top financial executive.

Bally Technologies, a descendent of Bally Manufacturing of Chicago, is a long-time member of the Nevada gaming industry. In 2007, it celebrated the seventy-fifth anniversary of the Bally trademark. Mark Lerner, the company's senior vice president for law and government and general counsel, has been a leading member of the Nevada gaming bar. He wrote important gaming regulations as a Deputy Attorney General and was general counsel for a casino company. A favorite recollection is joining with him on behalf of the company to win approval from the Nevada Gaming Commission for the cartoon character Popeye as a slot machine theme.

Others, although their casino properties aren't numerous, have added much to the gaming industry by their presence as well as their success. An example is Ed Roski, the owner of the Silverton Resort on the far southern edge of the Las Vegas Strip. In addition to his success in the gaming industry, in which he has been assisted by Craig Cavileer and Val Achtemeier, Ed is the principal of Majestic Realty, one of the oldest and largest private real estate companies in the U.S.; the chair of the Board of Trustees of USC; and a co-owner of the Los Angeles Kings, the Los Angeles Lakers, and Staples Center

in downtown L.A., which is home to the Kings, the Lakers, and the Los Angeles Clippers. The work of Rich Iannone, Randy Miller, and Richard Gonzales provided a model for success in neighborhood gaming operations.

Another prime example of a gaming figure who has made a difference, despite having a relatively small property, is Becky Binion Behnen, the last of the Benny Binion family to operate the Horseshoe in downtown Las Vegas. She is a person of integrity, who had a passion to maintain the essence of that fabled enterprise. My youngest brother, Ron, was an employee of some thirty years there, retiring as general manager. The World Series of Poker is just one of the Binion family contributions to the development of the gaming industry. The property has been acquired by Terry Caudill, who started his career in Nevada gaming as a keno writer and craps dealer at Harrah's Reno. He also owns the Four Queens in downtown Las Vegas.

Another of the legends of downtown Las Vegas was Andy Tompkins, who built a news stand with a few slot machines into the Lady Luck Hotel and Casino and then into Lady Luck Gaming, a public company. (The format of the present blackjack table layout contains a revision developed by Tompkins.) Rory Reid, the chair of the Clark County Commission and my law partner, became the first general counsel of Lady Luck Gaming. Andrew Donner later acquired the Lady Luck Hotel and Casino with an

ambition to use it as the cornerstone of a downtown redevelopment led by Mayor Oscar Goodman and the Las Vegas City Council.

I was one of the Nevada attorneys who represented Donald Trump from time to time as he evaluated possible entry into the Nevada gaming industry. I always thought two of his best decisions were hiring Ernie East as his general counsel and Mike Rumbolz, a former chairman of the Nevada Gaming Control Board, as his first CEO in Nevada. A refreshing new presence in Nevada gaming is Sher Gaming, headed by Ed Sher and his chief executives, Roger and Scott Bulloch.

Of all the entertainers with whom I interacted, I developed a special regard for Steve Rossi, the vocalist and “straight man” element of the Marty Allen & Steve Rossi combo. At one time, they were America’s top comedy team in the U.S., appearing on more than 700 television shows, including one that featured the inaugural appearance of the Beatles. Rossi not only has maintained his talent and drive, he is noted for his humanitarian efforts.

I hope my career extends far enough so that I can do a lot more, but, if it ended right now, there are two or three things in which I would take pride. One is that I think I helped gain recognition for gaming law as a distinct

discipline in the legal profession. When I began, there was no such thing as a gaming attorney. If you were an attorney, you could handle gaming cases, but it was not seen as a speciality. Now there are organizations composed entirely of gaming attorneys, there are sections on gaming law in state bars, and there are other indications that it finally has won a place in legal practice.

Another is that I had the opportunity to play some small part in the creation of gaming law in Nevada. I've been fortunate to have clients who gave me the opportunity to play a part in almost every major legislative measure, every major change in Gaming Commission regulations for almost thirty years. It's great to look back and see, in some cases, my own words in important statutes and regulations. I'm grateful I was given the opportunity to play that role.

Finally, I deeply appreciate being appointed an adjunct professor for gaming law at the William S. Boyd School of Law, UNLV. I began teaching in 2001 as the successor to the legendary Shannon Bybee. My first gaming law course has grown to five courses, which represent the largest and most varied gaming law offerings at any law school. Tony Cabot, Greg Gemignani, Mark Clayton, Sen. Richard Bryan, Claudia Cormier, and Jennifer Roberts are other instructors who made that possible.

Professors Jeff Stempel and Steve Johnson have been my faculty advisors. Professor Johnson's work as head of

a faculty committee on gaming law expansion has been instrumental in advancing a vision developed by Dean Richard Morgan, and enhanced by Dean John Valery White, to create a course of study that we hope will result in an opportunity for students to earn a certificate in gaming law studies. The gaming attorneys of tomorrow are coming out of the Boyd School of Law much better equipped for leadership than their predecessors were.

I'm very satisfied with my career in gaming. I realize that any success I've had is due mostly to great clients, who not only gave me the opportunity to practice, but who also gave me advice on how to do it better; great cooperation and guidance from gaming regulators and legislators; and great support from people within Lionel Sawyer & Collins, who are better attorneys than I am. As long as I feel that I'm making a contribution, and nobody I respect contradicts it, I'm going to keep working.

I'm hopeful that my treasured assistant, Sandy Similey, feels the same way. In 2009, she was in her 29th year as the keystone of my legal practice and law school endeavors. Without the contributions of her experience, wisdom, commitment, and loyalty, I am sure there would have been fewer positive memories to record in this book.

In 1988, the *Las Vegas Review-Journal* selected Sandy as the "Las Vegas Secretary of the Year," based on a nomination I wrote that was patterned on a poem by Elizabeth Barrett Browning.

Thanks for allowing me to close these recollections with that nomination, not only as a recognition of Sandy but also as a tribute to the countless secretaries and assistants who contributed so much to the fabled development of Nevada's gaming law structure, gaming control system and its gaming industry but will never get the credit they deserve.

"What do I appreciate about your contributions to my professional career and personal well-being? Let me count the ways.

"(1) For your dedication to office responsibilities and the calm, quiet, cheerful and even-tempered manner in which you fulfill them.

"(2) For not letting any outside problem or interest interfere with your work performance.

"(3) For possessing a memory and organizational skill that allows you to keep control of several complex matters simultaneously and to retrieve from the files a years-old document that has suddenly become relevant to a new matter.

"(4) For meeting deadlines without exception and assuring that the work product of our office meets all standards, quietly correcting any errors I have made without comment.

"(5) For jealously guarding our clients' confidences and my own.

“(6) For recognizing that personal appearance is an important component of performance in a position that deals with the public.

“(7) For providing me steadfast support and counsel in times of crisis.

“(8) For recognizing when it is necessary for you to assume responsibility in my absence and for fashioning an appropriate remedy.

“(9) For allowing me, because of your great competence, to enjoy a better professional reputation than I deserve.”

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